TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925

No. 279

CITY OF DOUGLAS, PLAINTIFF IN ERROR,

vs.

FEDERAL RESERVE BANK OF DALLAS

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

FILED FEBRUARY 16, 1925

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Plaintiff's First Amended Petition

In the United States District Court for the Western District of Texas, El Paso Division.

CITY OF DOUGLAS, ARIZONA, a Municipal Corporation, *Plaintiff*,	)	
vs.	)	No. 847 LAW.
FEDERAL RESERVE BANK OF DALLAS, *Defendant*.	)	

COMES NOW the plaintiff and with leave of Court, files this, its First Amended Petition, in lieu of its Original Petition filed November 29, 1922, in the District Court of the 41st Judicial District of Texas, and for such amendment the plaintiff shows:

That the City of Douglas, Arizona, is a municipal corporation, duly and lawfully organized under the laws of the State of Arizona, and that the defendant, Federal Reserve Bank of Dallas, is a corporation duly incorporated under thet laws of the United States, that it is doing business and conducting a banking house in the County of El Paso and State of Texas, and that it has answered herein and for Cause of Action, plaintiff alleges:

I.

That on or about December 22, 1920, the County Treasurer of Cochise County, Arizona, executed its certain check payable to the City of Douglas, Cochise County, Arizona, in the amount of Five Thousand Dollars ($5,000.00) which check was drawn upon the Central Bank of Willcox, at Willcox, Arizona, and said check was delivered to the City of Douglas about the 24th day of De-

cember, 1920; that on said dates the Treasurer of Cochise County Arizona, had on deposit in the Central Bank of Willcox, Arizona, sufficient funds to meet said check; that said check was given for valuable consideration and in payment of a lawful obligation to the City of Douglas:

II.

That on or about December 24, 1920, the City of Douglas deposited said check for collection in the First National Bank of Douglas, Arizona, which Bank agreed only to transmit them for collection, that said bank is a Federal Reserve bank, that is to say, that it is a member of the Reserve Bank System created by the acts of Congress; that said First National Bank of Douglas, Arizona, in turn, on or about the same date, transmitted the check by mail to the El Paso Branch of the Federal Reserve Bank of Dallas, to be by it presented and collected; the proceeds thereof to be remitted to the First National Bank of Douglas, Arizona, for the credit of the City of Douglas; that said check was received by the El Paso Branch of the defendant herein, Federal Reserve Bank of Dallas, upon December 27, 1920; that on December 30, 1920, this check reached the Central Bank of Willcox, Arizona, having been mailed by the defendant herein direct to the drawee, the Central Bank of Willcox, at its banking house at Willcox, Arizona; that the First National Bank of Douglas, Arizona, is situated in the Dallas District of the Federal Reserve System; that the Central Bank of Willcox is on of the banks which, under the meaning of the regulations of the Federal Reserve Board, had agreed to remit at par through the Federal Reserve Bank of the Dallas District, it being one of the banks that under the acts of Congress and the regulations of the Federal Reserve Board, whose checks were to be collected at par by the Federal Reserve Bank of Dallas; that

in sending said check direct to the drawee, the defendant herein failed to use ordinary and reasonable care, and was guilty of negligence, and in failing to cause the same to be presented to the Central Bank of Willcox for payment through some other channel, the defendant herein was guilty of negligence.

III.

That at the time said check was presented, the Treasurer of Cochise County, Arizona, had on deposit with the Central Bank of Willcox, sufficient funds to meet said check, and had the defendant herein presented the same through some other channel, rather than by sending it direct to the drawee, it would have been paid; that the Central Bank of Willcox charged the deposit of the County Treasurer of Cochise County, Arizona, with said check and in due course returned the canceled check to him, and it tendered to the defendant herein a check dated December 30, 1920, drawn on the Central Bank of Phoenix, Arizona, for the sum of Six Thousand, Four Hundred and Twenty-six Dollars and Seventeen Cents ($6,426.17), signed by J. H. Reid, Jr., its Cashier, which said check included the item of Five Thousand Dollars ($5,000.00) that the defendant herein had undertaken to collect from the Central Bank of Willcox for the benefit of the payee in said check; that the said Cashier's check was received by the defendant herein and accepted by it in payment of said obligation, and in accepting said Cashier's check in payment of the check drawn by the County Treasurer of Cochise County, the defendant herein failed to use ordinary and reasonable care, and was negligent; that it duty and obligation was to have required the payment of said County Treasurer's check in money, and that in accepting the Cashier's check of the Central Bank of Willcox, it did so at its own risk:

IV.

That having received said Cashier's check, the El Paso Branch of the Federal Reserve Bank, transmitted the same to the Federal Reserve Bank of Los Angeles, California, for presentation and collection from the drawee, the Central Bank of Phoenix, Arizona, at Phoenix; that on or about January 5, 1921, the Federal Reserve Bank of Los Angeles, forwarded said check direct to the Central Bank of Phoenix, drawee, for presentation and collection. On January 8, 1921, said check was protested for nonpayment, there being insufficient funds of the Central Bank of Willcox, in the Central Bank of Phoenix, to meet this check.

V.

The plaintiff shows that the Cashier's check above described, was drawn by the Cashier of the Central Bank located at Willcox, Arizona, and alleges that it is a different corporation from the Central Bank of Phoenix, but shows that said Cashier's check, a copy of which is hereto attached, marked "Exhibit A," contained in small letters under the principal title, "The Central Bank" the words "of Phoenix". The plaintiff shows that the check was drawn by the Central Bank located at Willcox, Arizona, and drawn upon the Central Bank of Phoenix, Phoenix, Arizona.

VI.

That on to-wit: about January 10, 1921, the Central Bank of Willcox, and the Central Bank of Phoenix, being insolvent, closed their doors and ceased to do business, and plaintiff alleges that both of said banks had been insolvent for more than thirty (30) days prior to that date, and that their condition was known to the defendant, or

by reasonable and ordinary care in the due course of business should have been known to defendant, and the plaintiff shows that the defendant was negligent and failed to use ordinary care in transmitting the check of the County Treasurer of Cochise County, Arizona, direct to the Central Bank at Willcox; that there was sufficient funds on deposit at the time in said bank to the credit of the County of Cochise, so that had said check been sent to Willcox, Arizona, through some other channel, the same must have been paid and the proceeds thereof should in due course have reached the plaintiff herein: that thereafter, the defendant was negligent in accepting the Cashier's check of the Central Bank of Willcox as cash, in payment of the County Treasurer's check, which it had undertaken to collect, and that the defendant failed to use ordinary care and was negligent in delaying as it did the presentation of said Cashier's check of the Central Bank of Willcox, which reached it on or about January 1, 1921, so that the same was not presented for payment to the Central Bank of Phoenix until January 8, 1921, when there were insufficient funds on deposit at the Central Bank of Phoenix to meet the said Cashier's check of the Central Bank of Willcox.

VII.

That in accepting from the First National Bank of Douglas the check of the Treasurer of Cochise County in favor of the plaintiff, the defendant herein understood and obligated itself to use all due and reasonable care and ordinary precaution in collecting the same, to the end that no loss might result and that no opportunity might be afforded the drawee to fraudulently avoid payment. That the County of Cochise, Arizona, being indebted to the City of Douglas, in the sum of Five Thousand Dollars ($5,000.00), its Treasurer drew his check for that amount payable to the City of Douglas against the Cen-

tral Bank of Willcox, and had at that time and at the time the check was presented to the Cenral Bank of Willcox, sufficent funds to pay that check, and the Central Bank of Willcox charged the amount of said check against the funds of the County of Cochise on deposit with it, and therefore, the County of Cochise has in effect paid and liquidated its obligation to the City of Douglas, and it contends that the City of Douglas cannot recover anything of it by reason of said obligation; that but for the negligent action of the defendant herein in sending said check direct to the drawee, the money would have been collected upon said check, and in due course would have reached the plaintiff, and the obligation of the County of Cochise to it would in truth and in fact have been liquidated and paid but that the defendant disregarding its duty in the premises, sent the check direct to the drawee, although it knew at the time that the drawee was in failing circumstances and thereafter the defendant herein in violation of its duty to the platintiff, and at its own risk, accepted the Cashier's check of the Central Bank at Willcox in satisfaction of the County Treasurer's check and failed to demand and insist that cash be delivered to it in payment of said check, all of which was the lack of ordinary and reasonable care, and was negligence on the part of the defendant herein; that thereafter, although it knew that the Central Bank of Phoenix was in failing circumstances, it negligently failed to present the same promptly, but delayed the presentation thereof until the 8th day of January, 1921; the plaintiff further shows that the defendant herein had it within its power, by sending said check through some other channel for collection, or by demanding that the Central Bank of Willcox transmit cash to it in payment of said item, to have obtained the money and to have delivered it to the plaintiff; that its failure in these respects was in violation of the duty charged upon it by law when it undertook and

agreed to collect said check, and therefore, plaintiff has been damaged by the negligence of the defndant in the sum of Five Thousand Dollars ($5,000.00):

VIII.

That the defendant, the Federal Reserve Bank of Dallas, was established and incorporated under an act of Congress, entitled "An Act to Provide for the Establishment of Federal Reserve Banks, to furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective provision of banking in the United States, and for other purposes"; which was approved December 23, 1913. That by said act, every national banking association in the United States was required to become a member of the Federal Reserve System, and a stockholder in the Federal Reserve Bank of its district:

That the First National Bank of Douglas became such member and a stockholder in the Federal Reserve Bank of Dallas. That said act provided for the creation of the Federal Reserve Board, which had general supervision and power over the Federal Reserve Banks and all of the member banks; that Section 16 of the said Federal Reserve Act authorizes the Federal Reserve Board to require each Federal Reserve Bank to exercise the functions of a clearing house for its member banks, and Section 13 of the Federal Reserve Act, as amended June 21, 1917, authorizes each Federal Reserve Bank to receive from any non-member bank solely for the purpose of collection checks payable upon presentation. That in pursuance of the authority vested in it under these provisions of the law, the Federal Reserve Board, desiring to afford to the public and to the various banks of the country, a direct, expeditious, and economical system of check collection, arranged to have each Federal Reserve Bank

exercise the functions of a clearing house for its member banks; that in pursuance thereof the Federal Reserve Board adopted, promulgated and published the regulations providing for the collection of checks placed with it by its member banks, and in various forms and with different requirements, provided for the collection of checks both against member banks and nonmember banks.

That the First National Bank of Douglas was situated in the district of the Federal Reserve Bank of Dallas, and was a member thereof and a stockholder therein. That under said regulations its was in effect required to transmit checks for collection through the El Paso Branch of the Federal Reserve Bank of Dallas; that these facts were known to the City of Douglas, and that in depositing the check hereinbefore described, with the First National Bank of Douglas for collection, it knew and anticipated that the same would be transmitted for collection to the Federal Reserve Bank of Dallas. That the defendant herein likewise knew and anticipated that in the due course of its business, checks on banks outside of the City of Douglas deposited with the First National Bank of Douglas for collection, would, and must be transmitted by the said First National Bank of Douglas to this defendant for collection. That in anticipation of such collections, the Federal Reserve Board had adopted a regulation that the Federal Reserve Banks might send a check direct to the drawee for collection.

That with this knowledge and subject to these regulations, the defendant herein, Federal Reserve Bank of Dallas, accepted from the First National Bank of Douglas a check drawn by the County of Cochise, payable to the City of Douglas, on the Central Bank of Willcox, and in so doing undertook and obligated itself with and to the plaintiff to use due and reasonable care in the collection of said check and to undertake the collection thereof.

IX.

That the First National Bank of Douglas, habitually and customarily uses, and in this instance did use, in accepting from the City of Douglas the deposit of this check for collection, a deposit slip or ticket which provided in substance that in accepting checks for deposit or collection, it is understood and agreed, that any other bank undertaking such collection at the instance of the First National Bank of Douglas, acts as the agent of the depositor, and that the First National Bank of Douglas should be held liable for nothing, except its own defalcation; that such provisions in deposit slips are customary and common and the use of such deposit slips by the First National Bank of Douglas was known to the defendant herein.

WHEREFORE, Plaintiff prays that process issue to defendant and on final hearing it have judgment against the defendant for the sum of Five Thousand Dollars ($5,000.00) with interest at the rate of six per cent (6) thereon; it prays further that it recover its costs and have general and equitable relief.

KNAPP, BOYLE & PICKET,
WHITAKER & PETICOLAS,

Attorneys for Plaintiff.

Filed Mar. 30, 1923 (El Paso Division), D. H. Hart, Clerk U. S. District Court, West. Dist. of Texas; by Nan B. Smith, Deputy Clerk.

Defendant's First Amended Answer

In the United States District Court for the Western District of Texas, El Paso Division.

THE CITY OF DOUGLAS, ARIZONA, a Municipal Corporation, *Plaintiff*, vs. FEDERAL RESERVE BANK OF DALLAS, Defendant.) No. 847 LAW.

Comes now, defendant, Federal Reserve Bank of Dallas, leave of Court first obtained, and files this, its first amended original answer in lieu of original answer, heretofore filed, and for such amendment, excepts to plaintiff's first amended original petition and says same is not good in law, shows no cause of action, and of this prays judgment of the Court.

E. B. STROUD, JR.,
TURNEY, BURGES, CULWELL, HOLLIDAY & POLLARD,

Attorneys for Defendant

Said defendant especially excepts to said petition, as follows:

(a) It appears that the action is based upon the alleged failure of defendant to collect and account to the plaintiff for the proceeds of a check given to it by the County Treasurer of Cochise County, Arizona. The suit is not instituted by any Bank, the United States or other Federal Reserve Bank, and under the law creating Federal Reserve Banks, the same may only receive deposits of currency, checks and drafts payable upon presentation from Banks, the United States or other Federal Reserve Banks. It is not authorized to deal with others. There is, therefore, no liability herein in behalf of the plaintiff against this defendant.

(b) It definitely appearing from plaintiff's petition that the check in question was deposited in The First National Bank of Douglas, for collection, and not in defend

ant Bank, there was and is no privity of contract between the plaintiff and defendant. It did not and could not become an Agent of Plaintiff under which a liability as herein asserted, exists.

On each of the above special Exceptions, defendant prays judgment of the Court.

E. B. STROUD, JR.,
TURNEY. BURGES, CULWELL, HOLLIDAY & POLLARD,

Attorneys for Defendant

Answering further only in the event the above exceptions are overruled, and subject thereto, this defendant denies all and singular the allegations in Plaintiff's Petition contained, says same are not true in fact, and of this puts itself upon the country.

E. B. STROUD, JR.,
TURNEY. BURGES, CULWELL, HOLLIDAY & POLLARD,

Attorneys for Defendant

Especially answering, if required, this defendant represents:

I.

That it is a banking corporation, organized under an Act of Congress of the United States of America, commonly known as the Federal Reserve Act; that the defendant bank is one of twelve similar banks organized under such law; that by the provisions of the said Federal Reserve Act, a Board, known and designated as the Federal Reserve Board, located in Washington, District of Columbia, has been designated and granted certain powers of regulation and control over this defendant, and other similar banks, such designation and control being fully set forth in the provisions of the said Federal Re-

serve Act. That pursuant to the powers conferred upon the Federal Reserve Board, by Sections 13 and 16, of said Federal Reserve Act, the said Federal Reserve Board has promulgated certain rules and regulations governing the operation of check clearing and collection departments of each Federal Reserve Bank, including this defendant; that such regulation is commonly known as Regulation J, Series of 1920, provides as follows:

> "(8) In handling items for member and non-member clearing banks, a Federal Reserve Bank will act as agent only. The Board will require that each member and non-member clearing bank authorize its Federal Reserve Bank to send checks for collection to banks on which checks checks are drawn, and, except for negligence, such Federal Reserve Bank will assume no liability. Any further requirements that the Board may deem necessary will be set forth by the Federal Reserve Banks in their letters of instruction to their member and non-member clearing banks. Each Federal Reserve Bank will also promulgate rules and regulations governing the details of its operations as a clearing house, such rules and regulations to be binding upon all member and non-member banks which are clearing through the Federal Reserve Bank."

That said circular had been duly promulgated, including Section 8, above set out, and same was in full force and effect, in and throughout the Eleventh Federal Reserve District, at each and all of the times and dates set out in plainiff's first amended original petition.

This defendant further alleges that on or about the 18th day of February, 1920, it issued its circular No. 3, Series of 1920, covering the terms and instructions under which it received checks from member banks for collection. That the First National Bank of Douglas, Arizona, was, on all dates mentioned in plaintiff's petition, a member bank and stockholder in the Federal Reserve Bank of Dallas. That said Circular No. 3, Series of

1920, was furnished to The First National Bank of Douglas, Arizona, prior to the 24th day of December, 1920, and was in force during all the time and dates referred to in plaintiff's first amended original petition; and said Circular is attached hereto, marked Exhibit "A", and made a part of this answer. This defendant would particularly show, that said Circular No. 3, Series of 1920, provides in part, as follows:

> "In handling items for member banks, the Federal Reserve Bank of Dallas, or its Branches, will act as agent only. It is understood that each member bank authorizes the Federal Reserve Bank of Dallas, or branch thereof, to send checks for collection direct to banks on which checks are drawn, and except for negligence the Federal Reserve Bank of Dallas assumes no liability until funds are actually in its hands, and is authorized to charge back the amount of any item for which it has not received final payment, including items lost in transit. The sending of items by member banks to the Federal Reserve Bank of Dallas or its branches, for credit will be construed as an agreement to the terms stated herein and an acceptance of the provisions here detailed as to the liability of the Federal Reserve Bank of Dallas in handling transit business."

Defendant avers that under the terms and provisions of Regulation J, Series of 1920, issued by the Federal Reserve Board, that it had the right, as a matter of law, to forward the said Five thousand dollar ($5,000.00) item complained of, direct to the Bank of Wilcox, for collection. Defendant further avers that its contract and undertaking for the collection of the said Five thousand dollar ($5,000.00) check, complained of, is fully stated in its Circular No. 3, Series of 1920; that this defendant's agreement and undertaking was solely with the said The First National Bank of Douglas, Arizona, and is limited to the purposes and conditions incorporated in this defendant's agreement with said First National Bank, which said agreement is fully set forth in Circular No. 3,

Series of 1920, attached to and made a part hereof. That in forwarding the said Five thousand dollar ($5,000.00) check, complained of, the First National Bank of Douglas, did do, under the terms and conditions imposed by the Regularion J. Series of 1920, and in accordance with the agreements and stipulations contained in said Circular No. 3, Series of 1920, and that same constituted all of the oblgation of this defendant, relative to the handling of said check; and if the defendant be mistaken in its allegations, above made as to its contractural obligations, then defendant avers that the said First National Bank of Douglas, Arizona, was an independent agent of the said plaintiff in this case, and as such agent, undertook on behalf of its principal, to make the agreements contained in Circular No. 3, Series of 1920, with this defendant; that said First National Bank of Douglas, Arizona, as agent for the plaintiff, was fully informed of the terms and conditions, under which this defendant would undertake the collection of said check, complained of, and that such knowledge was binding on the plantiff in this cause.

By virtue of the facts, hereinabove alleged, this defendant denies that it was guilty of negligence in any respect in forwarding the said item complained of in plaintiff petition, direct to the bank, upon which check was drawn for collection, and in this behalf, specifically avers, that under the conditions known to said First National Bank of Douglas, and imposed by law upon such bank, this defendant had the affirmatve right to so send said item to the bank upon which drawn.

II.

This defendant, further answering herein, would show to the Court that since the organization of the check clearing and collection department of the Federal Reserve Bank of Dallas, it has become the general custom

for the Federal Reserve Bank of Dallas to forward items direct to the banks, upon which drawn for collection. That said custom was generally known to all member banks, located in the Eleventh Federal Reserve District, in which the Federal Reserve Bank of Dallas is located, and that knowledge of said custom was well known to the First National Bank of Douglas, Arizona, agent for plaintiff herein, on the 24th day of December, 1920, and at all times since then, by virtue of which, the plaintiff in this cause, had, or was charged with knowledge that said check would be forwarded direct to the bank, upon which drawn, by the defendant, for collection, and that said plaintiff, in forwarding said check, through its duly au thorized agent, The First National Bank of Douglas, Arizona, thereby consented that this defendant might forward same direct to the bank, upon which drawn for collecton.

III.

Further answering herein, this defendant would show, that prior to the dates complained of, in plaintiff's amended petition, it had, in accordance with the terms of the Federal Reserve Act, and regularion J, Series of 1920, issued by the Federal Reserve Board, organized and instituted a check clearing and collection department, for the benefit and service of its member banks, located in the Eleventh Federal Reserve District, and other Federal Reserve Banks in the United States of America; that in such clearing and collection department, this defendant handled daily, for collection, checks and drafts, aggregating many millions of dollars. That this service and function was performed by this defendant, without charge, and gratuitously, for the benefit of its member banks. This defendant further avers that no bank was compelled to utilize or take advantage of the service in this respect, which it offered, but on the other hand, that

this member bank had the option of selecting this defendant as its collecton agent, or other agents, which in its discretion, it might desire to use. This defendant further avers that on account of the magnitude of its operations in respect to its check clearing and collection functions, and on account of the fact that these undertakings were absolutely gratuitous, that it established certain rules and regulations, by which it would be guided, and by which its liability in respect to such undertakings would be fixed. and that accordingly, it issued and promulgated its Circular No. 3, Series of 1920, a copy of which had been furnished the First National Bank of Douglas, Arizona, prior to the dates complained of in plaintiff's amendeed original petition, and the same was in full force and effect on all dates complained of in the plaintiff's amended original petition.

This defendant would show to the Court, that under the plan in operation on the dates herein referred to, that a member bank of the Federal Reserve Bank of Dallas, desiring to utilize the facilities offered in respect to check clearings and collection, would forward to the Federal Reserve Bank of Dallas, such checks or drafts which it desired the Federal Reserve Bank of Dallas to collect; that the Federal Reserve Bank of Dallas had, by experience, prepared and issued what was commonly known as the Deferred Availability Schedule; that this schedule shows the average number of days it would take the Federal Reserve Bank of Dallas to collect checks on given points; that in accordance with the custom and practice in effect between the Federal Reserve Bank of Dallas, and its member banks, any check forwarded the Federal Reserve Bank by a member bank, for collection, would be credited to the account of the member bank, at the expiration of the time mentioned in said deferred availablity schedule, whether or not the check had actually been collected; that

this credit was made subject to the right of the Federal Reserve Bank of Dallas, to charge the account of the member bank for the item for which credit had been given, in the event said item was not finally paid. That this procedure is fully set forth in *Circular No. 3, Series of* 1920, promulgated by this defendant, and was fully known and understood by the First National Bank of Douglas, Arizona. That in accordance with the custom and practice in this respect, this defendant alleges that Wilcox, Arizona, was a three day point, and that the account of the First National Bank of Douglas, Arizona, on the books of the Federal Reserve Bank of Dallas, or its El Paso Division, was credited with $5000.00, on the 30th day of December, 1923; this defendant not having received final payment for said item, complained of, charged the account of the said First National Bank of Douglas, Arizona, with the amount that had heretofore been credited, and that this charge was fully acquiesced in, by the First National Bank of Douglas, Arizona. That this defendant has never received final payment of said item, and that it has performed all of the duties and obligations imposed upon it, by Regulation J, of the Federal Reserve Board, and the terms and provisions of said Circular No. 3, Series of 1920, and that by virtue whereof, this defendant is liable in no respect, and these facts are all plead in bar of recovery herein.

IV.

Further answering herein, this defendant avers that on all of the dates complained of, in plaintiff's amended original petition, it was the general custom, among banks, of the Eleventh Federal Reserve District, to accept remittance collections and drafts, drawn on other banks; that this custom was generally known among all banks in the Eleventh Federal Reserve District, and that the First

National Bank of Douglas, Arizona, was fully informed of said custom, and knew that defendant herein, in effecting collection of the item in question, was not to receive cash in settlement of the item in question, but would follow the custom employed by banks respectively receiving remittance drafts. Defendant further avers that it was the custom and practice of the Federal Reserve Bank of Dallas, and other institutions, having check clearing and collection facilities, to forward checks for collection, and receive in return therefor, checks and drafts on other banks; that this custom and practice had existed for many years prior to the dates complained of in plaintiff's amended original petition, and existed at such time; that this custom and practice was well known to all banks in the Eleventh Federal Reserve District, including the First National Bank of Douglas, Arizona, and that this defendant, in accepting the draft of the Central Bank of Wilcox, drawn on the Central Bank of Phoenix, in settlement of the check drawn by the County of Cochise, and made the basis of plaintiff's action, followed the general custom heretofore pursued by it in the handling of collections for member banks, and that the First National Bank of Douglas, Arizona, knew, or should have known, that defendant would so accept a draft drawn by the Central Bank of Wilcox, Arizona, in settlement for said check, and by reason of said custom, so known to it, said First National Bank of Douglas, Arizona, acquiesced therein, and in this behalf, defendant further avers that in accepting the draft, so drawn, by the Central Bank of Wilcox, it did so, subject to final payment thereof, as provided for in Circular No. 3, Series of 1920, which said final payment has not been made.

V.

Further answering herein, this defendant would show to the court, that the usual customary practice of collect-

ing checks, followed by the Federal Reserve Bank, drawn on banks, located in other Federal Reserve Districts, was to forward said check to the Federal Reserve Bank, or branch, located in the district wherein the drawee bank was domiciled; that the Central Bank of Phoenix ,Phoenix, Arizona, was located in the district of the Los Angeles Branch of the Federal Reserve Bank of San Francisco, and that this defendant followed the usual customary and reasonable practice, by sending said check for collection to the Los Angeles branch of the Federal Reserve Bank of San Francisco, by virtue whereof, this defendant denies that it was guilty of negligence in any respect, with reference to collection of remittance draft in the sum of $6426.17, drawn by the Central Bank of Wilcox, on the Central Bank of Phoenix, Arizona, which included the $5000.00 in question.

VI.

Further answering herein, this defendant avers that from and after the date of the receipt by the Central Bank of Wilcox, of the check complained of in plaintiff's amended original petition, that the said Central Bank of Wilcox, never at any time, had sufficient credit balance with the Central Bank of Phoenix, with which to pay the remittance draft forwarded the El Paso Branch of the Federal Reserve Bank at Dallas, and that this defendant would have been unable to collect said check, regardless of the means that it had employed in collecting same; by virtue whereof, this defendant denies that its acts or conduct with reference to the collection of the check, sent it by the Central Bank of Wilcox, and drawn on the Central Bank of Phoenix, in any way injured or damaged the plaintiff.

VII.

Further answering herein, this defendant, specifically

denies that it has been guilty of negligence in any respect, with reference to the handling of the collection of said draft, complained of in plaintiff's first amended original petition, but should the court find that the defendant is mistaken, in this particular, then this defendant would show to the court that on the date the defendant, Federal Reserve Bank, received the said check complained of in plaintiff's amended original petition, that the plaintiff's agent, to-wit: the First National Bank of Douglas, Arizona, knew the Bank of Wilcox Wilcox, Arizona, the bank upon which said check was drawn, to be in an insolvent condition, which fact was unknown to this defendant, and the said plaintiff's agent, the First National Bank of Douglas, failed to notify this defendant, of said fact, but designated this defendant as its agent and permitted this defendant to deal with the said the Bank of Wilcox, Wilcox, Arizona, without knowledge of said fact, and without divulging such information to this defendant, and in these particulars, the said plaintiff, on account of the acts and conduct of its said agent, the First National Bank of Douglas, Arzona, was guilty of contributory negligence, which contributory negligence proximately caused the damage complained of in plaintiff's petition, if any, and by reason thereof, said plaintiff is not entitled to recover any damages herein.

VIII.

Further answering herein, this defendant, although still denying that it has been in any wise negligent in the handling of said check, alleges that the plaintiff, through its duly authorized agent, to-wit: the First National Bank of Douglas, Arizona, on the date it forwarded said check, complained of in plaintiff's first amended original petition, to this defendant, for collection, knew the Bank of Wilcox, the bank upon which said check was drawn, to be

in an insolvent condition, which fact was unknown to this defendant, and that said plaintiff, acting by and through its duly authorized agent, the First National Bank of Douglas, Douglas, Arizona, was guilty of negligence in forwarding said item for collection by a circuitous route, to-wit: from Douglas, Arizona, the location of plaintiff's agent, the First National Bank of Douglas, to El Paso, Texas, the location of defendant's branch bank, which is in an Easterly direction from the location of plaintiff's agent, the First National Bank of Douglas, Arizona, whereas, Wilcox, Arizona, is in a Northerly direction from the City of Douglas, Arizona, and located in the same county as plaintiff's agent. That the City of El Paso, Texas, to which plaintiff's agent forwarded said item, is three hundred miles, more or less, in a Easterly direction, whereas, the City of Wilcox, is located in the same county as the said City of Douglas, Arizona, and is only Seventy five miles, more or less, from the said City of Douglas, in a Northerly direction; that there is a direct rail and mail connection between the City of Douglas, Arizona; that instead of sending said check by the most direct route, the said plaintiff's agent chose an indirect and circuitous route for handling of said check, with full knowledge of the facts aforesaid; that such action on the part of the plaintiff, acting through its duly authorized agent, was calculated to mislead this defendant, and required one day additional time in getting said check to Wilcox, Arizona; that it was the duty of said plaintiff, or its duly authorized agent, the First National Bank of Douglas, Arizona, under the circumstances, to have taken the most direct manner of collecting said check, and having failed to do so, such negligence on the part of the plaintiff, or its duly authorized agent, the First National Bank of Douglas, Arizona, constituted and was the proximate cause of the damage complained of in plaintiff's petition, if any, and by reason of the premises, said plain-

tiff is not entitled to recovery of damages herein.

WHEREFORE, this defendant, having answered fully herein, asks that it be discharged; that it recover its costs herein and for such other and further relief as it may show itself entitled, and as in duty bound will ever pray.

E. B. STROUD, JR.,
TURNEY, BURGES, CULWELL, HOLLIDAY & POLLARD,

Attorneys for Defendant

Circular No. 3
Series of 1920.

FEDERAL RESERVE BANK
OF DALLAS

Exhibit "A". Dallas, Texas, February 18, 1920.

IMPORTANT

TRANSIT OPERATIONS

To Member Banks of District Number Eleven:

This circular supersedes all previous circulars governing the clearing and collection of checks and the same general provisions herein outlined are applicable with both this bank and its branches.

The clearing regulaton of the Federal Reserve Board contains the following language:

"Any further requirements that the Board may deem necessary will be set forth by the Federal Reserve Banks in their letters of instructions to their member and clearing member banks. Each Federal Reserve Bank will also promulgate rules and regulations governing the details of its operations as a clearng house, such rules and regulations to be binding upon all member and non-member banks which are clearing through the Federal Reserve Bank."

Effective March 1, 1920, the name of the "District Clearing House Department" will be changed to the "Transit Department," and its operations will be conducted as follows:

OUTGOING CASH LETTERS.

Outgoing cash letters from the Federal Reserve Bank of Dallas, or its branches, to its members, will be forwarded with a Settlement Check attached for the total amount of the letter.

Upon receipt, this Settlement Check must be detached, dated, officially signed and returned immediately in the self-addressed, stamped envelope enclosed with the cash letter.

This Settlement Check will serve as an order to charge the total of the cash letter to the member bank's reserve account and as an acknowledgment of receipt as at present.

The amount of this settlement check should not be changed. Any errors should be noted in an accompanying letter and correcting entries will be made upon receipt of the letter by us. Return items should be handled as shown below.

The settlement check will be charged to the account of the member bank when received by us, but when it is found that a prompt return of the settlement check has not been made, the amount of same will be debited in the same manner as if the Settlement Check had been received.

Nothing should be enclosed in the distinctive envelope with the Settlement Check except letters calling attention to any errors, but in order to offset the charge of a settlement check to its reserve account, a member bank may send, in the same mail for immediate credit, any of the following:

(a) Drafts on members of, and made payable through

the Reserve City Clearing House.

(b) Drafts on any bank in the city from which our cash letter was received.

(c) Cash, when prepared and forwarded under regulations established by the Federal Reserve Bank of Dallas (See our Circular on this subject).

(d) Return items:

Items sent in error, unpaid items originating in other districts or "DCH-4" advice of items returned direct to other banks. (Instructions on cash letters must be followed regarding protesting and advising of unpaid items).

A Branch of the Dallas Post Office will be located in the Federal Reserve Bank of Dallas, known as "Station K." To insure prompt handling, all envelopes should include, in the address, the words Station K, otherwise a delay in handling will result.

INCOMING CASH LETTERS.

Each incoming cash letter received by the Federal Reserve Bank of Dallas, or its branches, will be credited to the member bank's reserve account according to collection time schedules. On letters containing deferred credit items, advice will be sent showing date reserve account will be credited.

Banks making assortment of their sendings to us into letters of the same availability, according to time schedules, will receive the benefit of the shortest collection time.

When it is desirable, in order to save time, arrangements may be made with the Federal Reserve Bank of Dallas by member banks for direct routing of their items to the Head Office or Branch in the 11th Federal Reserve District outside of their territory, or to other Federal Reserve Banks or Branches, for credit at the Head Office or Branch to which they are attached.

Credit for incoming cash letters will be given as follows:

Immediate Credit

Letters containing only—

(a) Checks and drafts drawn on banks located in Dallas, El Paso and Houston when received at these respective cities as follows:

Dallas—prior to 10 a. m.—Saturday 9 a. m.

El Paso—prior to 10:15 a. m.—Saturday 10:15 a. m.

Houston—prior to 11:30 a. m.—Saturday 10:30 a. m.

(These hours are based upon the present clearing hours of the cities named and are subject to change).

(b) Drafts drawn on members of, and when marked payable through the Reserve City Clearing House, when received at Dallas or Houston prior to 10:30 a. m., Saturday 9:30 a. m.

(c) Drafts drawn on Federal Reserve Bank of Dallas or its branches when received prior to closing time.

(d) Checks drawn on Treasurer of U. S. when received prior to closing time.

(e) Matured coupons from U. S. Government bonds sent in separate letter by registered, insured mail direct to our Fiscal Agency Department, when received prior to closing time.

One Day Deferred Credit

Letters containing only—

(a) Items listed under "Immediate Credit" paragraphs (a) and (b) received after the hours specified and prior to closing time.

(b) Items received in Dallas—drawn on banks in Houston, not payable through Reserve City Clearing House—or vice versa—when received prior to 12 M.—Saturdays 11 a. m.

Two Days Deferred Credit

When received prior to 12 M.—Saturdays 11 a. m. letters containing only—

(a) Items received in Dallas or Houston, drawn on banks in El Paso—or vice versa.

(b) Items drawn on banks on 2 day collection schedule—(list to be furnished).

Three Days Deferred Credit

When received prior to 12 M.—Saturdays 11 a. m.

Letters containing miscellaneous items, received at Dallas, Houston or El Paso drawn on banks in their respective territories, not included in the above.

Four Days Deferred Credit

When received prior to 12 M.—Saturdays 11 a. m.

Letters containing unassorted items drawn on banks in entire 11th Federal Reserve District.

Therefore, care should be taken to sort all items according to time schedules.

Various Deferred Credit

Letters containing items drawn on banks in other Federal Reserve districts may, in the discretion of the Federal Reserve Bank, be deferred for longest period of any item contained therein—as per schedule to be furnished. Therefore, the proper sorting of all items is important.

Each letter should plainly indicate when the items enclosed are expected to be available as reserve, such as "Immediate Credit." "2 days," "3 days," etc. Business days only are to be counted in deferring—(a 2 day deferred letter, received by us Saturday would be available the following Tuesday.)

TERMS AND INSTRUCTIONS

In handling items for member banks, the Federal Reserve Bank of Dallas, or its Branches, will act as agent only. It is understood that each member bank authorizes the Federal Reserve Bank of Dallas, or branch thereof, to send checks for collection direct to banks on which checks are drawn, and except for negligence the Federal Reserve Bank of Dallas assumes no liability until funds

are actually in its hands, and is authorized to charge back the amount of any item for which it has not received final payment, including items lost in transit.

In order to secure uniform instructions, it is understood that all checks and drafts handled by the Federal Reserve Bank of Dallas, unless listed in a separate collection letter and plainly marked "Collection Items" are received under the following conditions:

(1) All unpaid items of $10.00 and over to be protested unless stamped on the face N. P. followed by the A. B. A. number of forwarding bank in the following form N.P.32-3 or to bear the impression of a similar stamp of a preceding bank endorser.

(2) Advice to be wired of dishonor of all items of $500.00 or over giving name of bank endorsing to Federal Reserve Bank of Dallas or Branch. All costs of messages, reporting items unpaid, will be borne by the Federal Reserve Bank.

(3) Any checks which have been protested for nonpayment will not be handled as cash when put through for the second time.

(4) Only checks drawn directly on a bank will be handled as cash. Drafts drawn "payable at" or "payable through" a bank, or those drawn upon individuals, firms or corporations must be sent as collections.

(5) Any collection items enclosed in cash letters will be returned except those of $500.00 and over which will be entered for collection and the proceeds placed to the member bank's reserve account when paid.

(6) In order to facilitate checking transcripts, any errors found in member banks' cash letters will be corrected by a debit or credit to the member bank's account and no totals of incoming letters will be changed.

(7) The Federal Reserve Bank of Dallas will not be responsible for the fulfillment of special instructions at-

tached to checks sent in as cash—such checks should be forwarded as collection items.

The sending of items by member banks to the Federal Reserve Bank of Dallas or its branches for credit will be construed as an agreement to the terms stated herein and an acceptance of the provisions here detailed as to the liability of the Federal Reserve Bank of Dallas in handling transit business.

IMPORTANT SUGGESTION REGARDING ACCOUNTING SYSTEM.

For their own convenience and in their own interests, Member Banks are urged to carry, on their general ledgers, two accounts with the Federal Reserve Bank: one of Collected Funds (Reserve Account) and the other Uncollected Funds. All items forwarded to the Federal Reserve Bank for credit, should be charged into the uncollected funds account, and on the day when such items are available for reserve or checking purposes, (as may be easily determined from our time schedules and advices heretofore mentioned), they should be charged into the Reserve Account. This suggestion applies also to items available for immediate credit on receipt. Totals of letters containing such items should be deferred until the date the letters are due to reach the Federal Reserve Bank, on which date Uncollected Funds Account should be credited and the Reserve Account debited. Deferment of other items begins on date of receipt by the Federal Reserve Bank. This will enable member banks to determine accurately the amount of their available reserve balances, and if our transcripts are daily checked, member banks will be enabled to avoid penalties for deficient reserves. Experience demonstrates that numerous penalties might have been avoided by member banks had they followed this suggestion.

COLLECTION ITEMS.

Items sent for collection, when enclosed in a separate letter marked "Collection Items," will be received, entered for collection, forwarded and proceeds passed to the credit of the member bank when returns are received, less actual collection costs. Local items will be presented by messenger, or notice given, and the proceeds credited upon receipt. These collections will be made subject to the usual limitations as to liability. Only actual cost of collection, if any, will be deducted when the proceeds are accounted for, as the Federal Reserve Bank makes no charge for this service.

Respectfully,
R. L. VAN ZANDT, Governor.

Approved: February 16, 1920.
R. L. Van Zandt, Chairman
W. F. Ramsey
Marion Sansom
W. B. Newsome
B. A. McKinney
Executive Committee.

Caution—The proceeds of a member bank's own draft on its correspondent (unless falling within the class of items noted herein as being available for immediate credit on receipt) are no more available to the Federal Reserve Bank or its branches than a check drawn on the member bank by one of its customers.

Filed Oct. 1, 1923 (El Paso Division) D. H. Hart, Clerk, U. S. District Court, West. Dist. of Texas, by J. N. Phillips, Deputy Clerk.

Judgment of the Court

In the District Court of the United States for the Western District of Texas, El Paso Division.

THE CITY OF DOUGLAS, ARIZONA, a Municipal Corporation, *Plaintiff*, vs. FEDERAL RESERVE BANK OF DALLAS, TEXAS, *Defendant*.) No. 847 LAW.

BE IT REMBERED THAT on the 8th day of May, 1924, the above styled and numbered cause came on for trial, all parties appearing by their respective counsel, and a jury was waived and the trial of the cause proceeded with, and the Court having heard the evidence in the case and the argument of counsel, took the case under consideration until this the 29th day of May, 1924, and now being duly advised in the premises, is of the opinion that judgment should be rendered in favor of the defendant.

It is therefore, the order, judgment, and decree of the Court that the plaintiff, City of Douglas, Arizona, take nothing by this suit and that the defendant, Federal Reserve Bank of Dallas, Texas, go hence without day and recover of plaintiff all costs in this behalf incurred, for which let execution issue.

To which action of the court the plaintiff then and there in open court excepted.

(Signed) W. R. SMITH, *Judge*.

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Plaintiff's Bill of Exceptions

In the District Court of the United States in and for the Western District of Texas, El Paso Division.

CITY OF DOUGLAS	)
vs.	) No. 847-Law.
FEDERAL RESERVE BANK OF OF DALLAS.	)

BE IT REMEMBERED, That on the 8th day of May, 1924, the above cause came on for trial before the Honorable William R. Smith, United States District Judge in and for the Western District of Texas, at El Paso, Texas; plaintiff appearing by Messrs. Boyle & Pickett and Messrs. Whitaker & Peticolas, and the defendant appearing by Messrs. Turney, Burges, Culwell, Holliday & Pollard, and E. B. Stroud, Jr., Esq.

The following proceedings were had; this being an action at law to recover the amount of a certain check issued by the County Treasurer of Cochise County, Arizona, dated December 22nd, 1920, payable to the order of City of Douglas, Cochise County, Arizona, in the amount of $5,000.00, said plaintiff alleging that the El Paso Branch of the Dallas Federal Reserve Bank, defendant, was negligent in sending said check direct to the drawee, the Central Bank of Willcox, and in accepting its Cashier's check instead of cash.

The plaintiff invoked the rule, and all witnesses in the court room were called forward and sworn by the Clerk, and instructed by the Court under the rule.

* * *

MR. CULWELL: Our exceptions were overruled on a former hearing; I don't know that we wrote them up, if not we will write them now.

MR. PETICOLAS: I think they have been written up; if they were not we will.

The pleadings were thereupon read to the Court.

* * *

The plaintiff offered in evidence the deposition of

J. N. GAINES,

which was taken before Grace Sonntag, a Notary public in and for the City and County of San Francisco, State of California, on December 21st, 1923, said witness testifying as follows:

DIRECT INTERROGATORIES
(INTRODUCED BY PLAINTIFF)

My name is J. N. Gaines, age 50, place of residence San Francisco, California, and I am at present engaged in no occupation.

I was County Treasurer of Cochise County, Arizona, during part of the year 1920, and was such County Treasurer upon the 22nd day of December, 1920.

On December 22, 1920, I executed, as such County Treasurer, a check for the sum of $5,000.00, payable to the order of the City of Douglas; the original check is not in my possession, but is in the possession of the present County Treasurer of Cochise County, Arizona, who is M. C. Hankins; the attached copy of the check referred to is a substantial copy of that check.

(The copy next above referred to, which was
(attached to the interrogatories, is in words
(and figures as follows:

"COPY

CBofW GUY C. WELCH, COUNTY TREASURER

No. 66

TOMBSTONE ARIZ. DEC. 22 1920

PAY TO THE
ORDER OF City of Douglas $5000.00
PAY $5000and00CTS DOLLARS
To CENTRAL BANK 91-100
of Willcox
WILLCOX. ARIZ.

J N Gaines CO. Treas.

(Stamped)

CENTRAL BANK
PAID
Dec 30 1920
.....
Willcox Arizona

(marked)
N. P.
91-28

Endorsed on Reverse Side:

Pay to
The First National Bank
Douglas, Arizona
C. F. SPADER
City Clerk and Treasurer

91-28
Pay to the order of
EL PASO BRANCH
Federal Reserve Bank of Dallas
DEC 24 1920
All prior Endorsements Guaranteed
FIRST NATIONAL BANK
Douglas, Ariz.
91-28

Pay to
The order of
Any Bank or Banker
Prior Endorsements Guaranteed

DEC. 27 1920
88-1 EL PASO BRANCH 88-1
Federal Reserve Bank
of Dallas
El Paso, Tex.

* * *

I drew the check referred to pursuant to my duty as County Treasurer to the City of Douglas in payment of certain taxes due said City from the County of Cochise, the County having collected these taxes from the taxpayers of the City of Douglas, as required by law. I transmitted the check referred to in the usual course to the City Clerk of the City of Douglas.

I continued to be Treasurer of Cochise County, Arizona, until the 5th day of January, 1921.

The check referred to was marked paid by the Central Bank of Willcox, Arizona, upon which it was drawn, and duly returned to the custody of the Treasurer of said County of Cochise, Arizona.

CROSS INTERROGATORIES

(INTRODUCED BY DEFENDANT)

I did not deposit said check in the First National Bank of Douglas, Arizona, but delivered or transmitted it to the City of Douglas, through its proper officer, its City Clerk and Treasurer, who is one and the same person and official. The deposit slip referred to, therefore, never came into my possession.

Of my own knowledge, I do not know whether a deposit slip was ever issued, but assume that it was as this is the usual custom and that if it was so issued, it was delivered to the City of Douglas, the depositor.

* * *

The plaintiff offered in evidence the deposition of

which was taken before B. G. Thompson, a notary public in and for the County of Cochise, State of Arizona, on the 18th day of December, 1923, said witness testifying as follows:

DIRECT INTERROGATORIES
(Introduced by plaintiff)

My name is M. C. Hankins, age 46, residence Tombstone, Arizona, occupation County Treasurer of Cochise County, Arizona.

My official position in Cochise County is that of County Treasurer and Ex-officio Tax Collector.

The cancelled check for $5,000.00 dated December 22, 1920, signed J. N. Gaines, County Treasurer, on the Central Bank of Willcox, payable to the City of Douglas, is in my possession, and I now attach the same to my answers to these interrogatories as requested after the notary has marked the same for identification.

(The plaintiff thereupon introduced in evidence the cancelled check, which was marked Plf's Ex. No. 1, and is in words and figures as follows):

CBofW Guy C. Welch, County Treasurer. No. 66
Tombstone, Ariz. Dec. 22 1920

Pay to the order of City of Douglas $5000.00
Pay $5000 and 00 cts Dollars

(Signed) J. N. Gaines,
Co. Treas.

To CENTRAL BANK 91-100
of Willcox
WILLCOX, ARIZ.

(Stamped)
Central Bank
PAID

(Stamped)
N. P.
91-28

Dec 30 1920
Willcox Arizona
(Endorsed on reverse side): Marked for identfication
at the request of witness,
M. C. Hankins.
B. G. Thompson
Notary Public.

Pay to
The First National Bank
Douglas. Arizona
C. F. Spader,
City Clerk and Treasurer. Plffs. Ex. 1.
91-28

91-28 Pay to the order of
El Paso Branch
91-28 Federal Reserve Bank of Dallas
Dec. 24 1920
all prior Endorsements Guaranteed.
FIRST NATIONAL BANK
91-28 Douglas, Ariz. 91-28
91-28

Pay to the order of
Any Bank or Banker
Prior Endorsements Guaranteed
Dec 27 1920
88-1 EL PASO BRANCH 88-1
Federal Reserve Bank
of Dallas
El Paso, Tex.

On December 27, 1920, the County of Cochise had in deposit with the Central Bank of Willcox $34.273.17; on the 28th of December, 1920, it had $29,273.17; on the 30th of December, 1920, it had $24.237.90; and on December 31, 1920, it had $24,237.90.

CROSS INTERROGATORIES.
(Introduced by Defendant)

Yes, the check described in Direct Interrogatory No. 2, for $5,000.00, Dated December 22, 1920, payable to the City of Douglas, issued by J. N. Gaines, County Treasurer of Cochise County, Arizona, on the Central Bank of Willcox, Arizona was deposited in the First National Bank of Douglas. I do not have the deposit slip because the check was delivered to the City Clerk of the City of Douglas, who deposited the same in the First National Bank of Douglas.

The plaintiff offered in evidence the deposition of

MIERS CRUMP,

which was taken before Julian P. Harrison, a Notary Public in and for El Paso County, Texas, on the 10th day of November, A. D. 1923, said witness testifying as follows:

DIRECT INTERROGATORIES
(Introduced by Plaintiff)

My name is Miers Crump, age 34 years, place of residence is 2734 Federal Street, El Paso, Texas, and I am Cashier of the Federal Reserve Bank Branch, El Paso, Texas.

In December, 1920, and January, 1921, I was Cashier of the Federal Reserve Bank Branch, El Paso, Texas, and my connecton with that institution in the same capacity exists now.

Check for $5,000.00 drawn by the County of Cochise, payable to the City of Douglas, drawn on the Central Bank of Willcox, was received from the First National Bank of Douglas, Arizona, by the El Paso Branch Federal Reserve Bank of Dallas, December 27th, 1920, pur-

purporting to have been forwarded by the First National Bank, Douglas, Arizona. I cannot definitely determine drawer was as stated, as our records do not indicate names of drawers.

The check in question was forwarded direct to the Central Bank of Willcox, Arizona, on December 27th, 1920.

A remittance check was received from the Central Bank at Willcox, Arizona, January 3, 1921, in the form of a draft drawn on the Central Bank of Phoenix, Arizona. I cannot say whether it was drawn by the Cashier of that bank, but it purported to be an official document of the bank. I am unable to say whether we have check in our possession. The attached copy of the check, marked Exhit "A" is a substantial copy of the check inquired about.

(The copy of check attached to interrogatories,
(marked Exhibit "A", which the witness identified
(as a substantial copy of the check inquired about,
(is in words and figures as follows:

COPY.

THE CENTRAL BANK 91-100
of Phoenix

Exhibit "A" WILLCOX, ARIZ. 12-30 1920 No. 1360

PAY TO THE ORDER OF El Paso bch Federal Reserve Bk $6,426.17

Protest 4.00

$6430.17

***SIXTY FOUR HUNDRED TWENTY SIX DOLLARS SEVENTEEN CENTS**DOLLARS

To

THE CENTRAL BANK OF PHOENIX,

91-7 Phoenix, Ariz.

Jas.Fund

J. H. REID, JR.
Manager
Cashier.

Endorsed on Reverse Side:
Wired 88-1
1-10-21
D

3
JAN
C 8 B
1921

Pay To
The Order Of
Any Bank or Banker
Prior Endorsements Guaranteed
JAN -3 1921
88-1 EL PASO BRANCH 88-1
Federal Reserve Bank
of Dallas
EL PASO, TEX.

Another endorsement, more or less illegible, apparently as follows:

Any Banker or Trust Company
All Prior Endorsements Guaranteed
JAN 5 1921
LOS ANGELES BRANCH
Federal Reserve Bank of
16-16 San Francisco. 16-16

Photographic copy of check for $6.426.17 was furnished to E. W. Graves, Vice President, First National Bank, Douglas, April 1st, 1921, by the defendant bank upon written request of Mr. Graves.

Said Check No. 1360 (for $6,426.17) was forwarded

to the Federal Reserve Bank Branch, Los Angeles, California, for collection, January 3, 1921.

Said Check No. 1360 was never paid. The Federal Reserve Bank never at any time received the money in settlement thereof, nor any part of it.

It is a fact that our bank received the $5,000.00 check drawn by the County of Cochise, payable to the City of Douglas, drawn on the Central Bank of Willcox, for collection; and it is a fact that our bank transmitted the same direct to the Central Bank of Willcox, and the Central Bank of Willcox was one of the banks which under the regulations of the Federal Reserve Board our bank had authority to collect from at par.

It is not a fact that Check No. 1360 drawn by the Cashier of the Central Bank of Willcox, payable to the Federal Reserve Bank, for $6,426.17, was in settlement—with other items—of the check for $5,000.00 drawn by the County of Cochise, payable to the City of Douglas, which our bank had undertaken to collect. I have already stated it was not in settlement. They were collections. They consisted of some thirty or forty miscellaneous checks drawn on the Central Bank of Willcox, Arizona, varying in amount from $.75 to $347.43, received from various sources over the entire United States. The records I have before me do not disclose the identity of the source, which identity can easily be established by reference to the records of the defendant

In December, 1920, and January, 1921, the First National Bank of Douglas was a member of the Federal Reserve System.

The Federal Reserve Bank, or any bank with which I have been connected, has required the transmission of cash in payment of obligations from customers or other banks.

E. W. GRAVES.

a witness for the plaintiff, having been sworn, testified as follows:

DIRECT EXAMINATION:

My name is E. W. Graves. I live at Douglas, Arizona, I am Vice President of the First National Bank, at Douglas, Arizona. I have been connected with that bank since December, 1909.

The First National Bank is a member of the Federal Reserve System, and it was such member in December, 1920.

In December, 1920, the City of Douglas was a depositor with our bank. With reference to what arrangements we had with the City of Douglas with reference to the collection of checks, out of town items, I will say we handle them subject to payment, give them credit subject to payment; in other words, we accepted them for credit to final payment. If they were not paid we charged them back to the account. The pass book states on the face of it a provision to that effect.

(Counsel handed witness a book): That is a copy of the pass book of the City of Douglas; it is a correct copy. I did not bring the original because it is still in use by the City of Douglas, it belongs to them, and I had to bring a copy.

The provision about items being credited subject to final payment is contained in this notice, the last paragraph, and reads "All out of town items credited subject to final payment."

The check offered in evidence, drawn by the County Treasurer of Cochise County, Arizona, on the Central Bank of Willcox, payable to the City of Douglas, and dated December 22nd, 1920, was deposited with our bank on December 24th, 1920, and that same day was sent to the

Federal Reserve Bank, branch of the Federal Reserve Bank of Dallas, at El Paso, for collection and credit.

MR. STROUD: We would like to object to that last statement of the witness; if he sent it by writing the writing would be the best evidence of that fact, and we would like to have the writing introduced.

MR. PETICOLAS: We have the writing, your Honor.

(The witness): I have the office copy of our letter of transmittance. The check was sent to the El Paso Branch of the Federal Reserve Bank of Dallas.

MR. PETICOLAS: I will state they have been notified to produce it, your Honor, the original.

MR. STROUD: I think we have the original, Mr. Peticolas (producing paper).

(The plaintiff thereupon introduced in evidence the letter of transmittance referred to by the witness, same being marked "Plf's Ex. 2" and is in words and figures as follows:

"THE FIRST NATIONAL BANK 91-28
Douglas, Arizona

12 24 1920.

El Paso Branch Federal Reserve Bank of Dallas.,
El Paso, Texas.

O. T. 3 days. Plf's. ex. 2.

We enclose herewith for credit (N. P.)

Wire non-payment of items over (91-28)
$200.00

Protest all items over $10.00 not bearing this stamp or similar stamp containing the transit number of a preceding bank endorser.

Drawee	Amount	Last Endorser.
91 14	3 00	Douglas Drg Co.
88 236	15 63	W M Boling
91 100-√	5 000 00	City of Douglas. —
91 75	5 000 00	" " " "
91 118	105 52	Douglas Lumber Co.
91 74	75 00	Samuel Smith.
1st Natl Bank		
Ft. Worth Tex.	3 94	F W Officer.
91 74	47 45	M Kline
91 74	70 00	" " " "
91 13	1 00	Int. Laundry Co.
	10 320 91	s
	10 340 91	s
1st Natl Bank,		Murray & Layne.
San Francisco, Cal.	1 003 67	
16 11	20 00	Ferguson Drg Co.
91 23	12 50	Mathews Grocery
The Bank of Cal.	30 00	Western Union Tel.
" " "	90 00	" " " "
88 1175	30 00	Olive Hopkins.
11 8	35 50	M. H. Barton.
95 142	120 00	Mrs. J Curry.
88 1742	100 00	US. J. E. Howard
The Bank Of Cal.	20 00	A Arviya
	11 782 58	s
	11 782 58	s
95 122	5 00	Elias Comm Co.
91 69	7 00	Us.
	11 794 58	T

(Stamped on back): DEFERRED

Days	√	Available
1		Dec 28 1920
2		29
3	√	30

	4	31
69	5	3
	6	4

Inspector. ×

Received
Dec 27 A.M.
El Paso Branch
Federal Reserve Bank
of Dallas.

We received an acknowledgment of that letter of transmittal from the El Paso Branch of the Federal Reserve Bank of Dallas; I have it here. This is advice from the Federal Reserve Bank of Dallas, and we received that in reply to our letter transmitting the check that you have just introduced. That acknowledgment was received in due course of mail from the El Paso Branch of the Federal Reserve Bank of Dallas. We had transmitted the check payable to the City of Douglas with our letter of transmittal to the El Paso Branch of the Federal Reserve Bank of Dallas.

(The plaintiff thereupon introduced in evidence the acknowledgment above testified to by the witness, same being marked "Plf's ex. 3" and being in words and figures as follows):

"Tr. 138EP EL PASO BRANCH
FEDERAL RESERVE BANK OF DALLAS.

Mail to
The First Natl Bank, El Paso. Texas, 12-27-20
Douglas, Ariz. ADVICE AMOUNT
Your cash letter dated 12-24 containing deferred items will be credited to your reserve account on
12-30 11,794.58
S.

Plf's. ex. 3.

In connection with our relations with the Federal Reserve Bank we receive a daily transcript of account showing our reserve balance with them; that is one of them (indicating document shown witness by counsel). That is dated December 27th, 1920, and one credit there looks like December 28th, also.

MR. PETICOLAS: I only offer one item in that, $11,794.58.

THE COURT: What one, Mr. Peticolas?

MR. PETICOLAS: The amount of credit is $11,794.-58.

THE COURT: Does that include this item?

MR. PETICOLAS: This includes the same item, the $5,000.00 item.

(The plaintiff thereupon introduced in evidence the "Daily Statement", same being marked Plf's. ex. 4, Item of $11, 794.58; the entire statement being in words and figures as follows, but only the item of $11,794.58 being offered as material to this case):

"First National Bank,
Douglas,
Arizona

Daily Statement
In account with

30 -
(Date)

EL PASO BRANCH
Federal Reserve Bank of Dallas, Texas.

Statement and vouchers should be examined on receipt and errors reported promptly.

First amount in this column represents balance brought	Debits Description	Debits amount	Credits Description	Credits amount	Last amount in this column represents balance at close of

forward from last statement rendered.					business on above date.	
132,139.26s	12 28	SC	5,973.56-	RT	28.65	127,259.17
127,259.17s	12 27	SC	10,768.98-	RT	38.10	108,982.51
	28738	YD	2,600.00-	PI	1.12	
			Dec 1920			
	28722		30.00	12 CL	11,794.58	
			Dec 1920			
	28747		63.69	12 CL	655.56	
			Dec 1920			
	28739		1,134.38	Dec 1920		
	28727		10.15	Dec 1920		
	28730		104.00	Dec 1920		
	28737		5,000.00	Dec 1920		
	28718		10,000.00	Dec 1920		

Plf's. ex 4 Item of $11,794.58

PLEASE COMPARE WITH YOUR LEDGER IMMEDIATELY.

DO NOT HOLD UNTIL THE END OF THE MONTH TO CHECK

This statement is forwarded daily as an advice of all entries as made by the Federal Reserve Bank. To accomplish its purpose it should be checked against your ledger on receipt and exceptions reported to the Federal Reserve Bank AT ONCE. As no monthly statement is rendered, it is considered that our accounts are reconciled daily by you, and we cannot assume responsibility for exceptions not reported within a reasonable time after the receipt of the statement by you.
(On reverse side, printed in red).

KEY

R I Refund of interest
P R Penalty for deficient reserve

D O Discount on offering
C I Certificates of indebtedness
T L Telegraph cost
R S Revenue stamps
I C Interest coupons paid
C L Cash letter.
M S Money shipment
T F Transfer of funds
Y D Your draft
S C Settlement check
P I Postage and insurance
R T Returned item
E F Examination fees
C E Correcting entry
EX Exchange
R D Rediscount

Letters to refer to description of item
Numbers refer to date or number of item

EXAMPLE

10 C L—Cash letter of the 10th.
R T—Returned item.
4784 Y D—Your draft No. 4784.

The next we heard with reference to that check from the City of Douglas we received a telegram, I think it was on January 11th (1921). I have that telegram; it is a code telegram and here is the original telegram we received, with the pencil translation, and here is the confirmation of this telegram, received from the Federal Reserve Bank. We received this telegram over the regular Western Union wires, purporting to be from the Federal Reserve Bank at El Paso. This is a confirmation telegram, and this is also January 11th—yes, this is a confirmation letter, here is a further letter in reference to it; that is dated January 11th, and it is in code,

but the translation is "Without returns check No. 91-100 $5000.00 in yours of December 24th, total $11,794.58."

(The plaintiff thereupon introduced the original telegram and translation in pencil on same; the confirmation letter, and confirmation telegram; same being marked Plfs. ex. 5," "Plfs. Ex. 6," and Plfs. ex 7," respectively, and are in words and figures as follows):

(On Western Union Telegraph blank)

17SCA 14
First Natl Bank Plf's ex 5.
Douglas Ariz
ABACO WITHOUT RETURNS HAPPINESS AFFABLE AFFLICTED COURSING FALCONER TOTAL CURSIVE CANINE DOGGEDLY FLYBOOK FLYWHEEL

FEDERAL RESERVE BANK
846A

(In pencil)
Central Bank of Phoenix Willcox
Without returns check 91-100 5000.00 12-24 11794.58
We will keep you fully advised.

EL PASO BRANCH
FEDERAL RESERVE BANK OF DALLAS

El Paso, Texas, Jan. 11th, 1921.

First National Bank, Douglas, Ariz.
Gentlemen:

Please be advised that we are without returns on items received from you or for your account, listed to us in cash letters as indicated below. Please consider these items unpaid pending further advice from us. We are tracing and shall advise fate promptly.

Items drawn on Central Bank. Willcox. Ariz..

Date and Amount of Letter (All letters received from bank addressed unless otherwise indicated.)		Item
24 Dec. 23, 1920	$11.794.58	$5000.00

Plf's ex. 6

Total $5000.00

Yours very truly,

M. CRUMP, Cashier.

(On Western Union Telegraph blank)

Send the following message, subject to the terms on back hereof, which are hereby agreed to

El Paso, Texas

Jan 10th 1921

FIRST NATIONAL BANK

DOUGLAS ARIZONA

ABACO WITHOUT RETURNS HAPPINESS AFFABLE AFFLICTED COURSING FALCONER TOTAL CURSIVE CANINE DOGGEDLY FLYBOOK FLY WHEEL

FEDERAL RESERVE BANK

MURFF

7-55 p

Paid

CONFIRMATION

Without returns on check on 91-100 $5000 in yours of December 24th total $11,794.58. We will keep you fully advised.

We were subsequently advised by the Federal Reserve Bank that the check had not been paid. The Federal Reserve Bank charged it back to our account, and I wrote them that we disclaimed liability. We held it up until the 18th, when we credited the Federal Reserve Bank, and charged the account of the City of Douglas,

and we notified the City of Douglas of that fact in writing; I have the writing here, the one in red is a copy of the charge ticket, and the other is a letter, advice to the City Treasurer.

(The plaintiff thereupon introduced in evidence the charge ticket, which was marked Plf's ex. 8, and the letter to the City Treasurer of the City of Douglas, Which was marked Plf's ex. 9, said documents being in words and figures as follows:

Plf's Ex. 9.

THE FIRST NATIONAL BANK
DOUGLAS, ARIZONA

B. A. Packard, President
T. E. Pollock, Vice President
E. W. Graves, Cashier
A. B. Packard, Asst. Cashier
Wm. Alberts, Asst. Cashier

Jan. 18, 1921

Mr. C. F. Spader, City Treasurer,
Douglas, Arizona

Dear Sir:

We are charging the General Fund Account of the City of Douglas with five thousand dollars to cover the item of like amount on the Central Bank of Willcox, received in your deposit of December 24th, 1920, and which we are advised by the Federal Reserve Bank of El Paso is unpaid.

Yours very truly,
(Signed) E. W. Graves
Vice President.

Subsequent to January 18th, 1921, we asked the Federal Reserve Bank for a copy of the check which they had received from the Willcox Bank, and they eventually

furnished us that Check, or a photographic copy of it,—they did not furnish us with the check itself; they furnished us with a photographic copy of the check they had received from the Central Bank of Willcox they had received in payment for that. That is the photographic copy (indicating).

(The plaintiff thereupon introduced in evidence the photographic copy of the check, same being marked Plf's Ex. 10, and is in words and figures as follows):

TCBP THE CENTRAL BANK 91-100
of Phoenix Plf's ex. 10

Protested for
non-payment
Jan. 8, 1921. Willcox, Ariz. 12-30 1920 No. 1360
Kenneth G. Freeland
Notary.
(Stamped): 88-1
Pay to the order of El Paso Federal Reserve Bk beh. $6426.17
SIXTY-FOUR HUNDRED TWENTY-SIX DOLLARS SEVENTEEN CENTS—DOLLARS
To
THE CENTRAL BANK OF PHOENIX,
Phoenix, Ariz.
(Signed) J. H. Reid, Jr.
Manager
Cashier.

Jno. Fund.

(Endorsed on reverse side): Wired
88-1
1-15-21

3
C Jan B
8

1921 Pay to the order of
Any Bank or Banker
Prior endorsements Guaranteed
Jan - 3 1921
88-1 El Paso Branch 88-1
of Dallas
El Paso, Tex.

Pay to the order of
Any Bank Banker or Trust Co.
Prior Endorsements Guaranteed
Jan. 5 1921
Los Angeles Branch
Federal Reserve Bank
16-16 of San Francisco 16-16

(Stamped through this endorsement):

CANCELLED
Jan 10 191.

The First National Bank of Douglas has been doing business with the Federal Reserve Bank since it opened. We are required to maintain a reserve in the Federal Reserve Bank. In remitting for cash letters sent by the Federal Reserve Bank to us for collection they require a check on themselves, or I believe they would possibly accept a check on another bank in El Paso, but it has to be El Paso funds. A check on our reserve with the Federal Reserve Bank will be accepted; it is either that or El Paso funds of some sort. That requirement is made by them with reference to all of their member banks.

I think the City of Douglas was doing business with the First National Bank of Douglas, Arizona, before I went there, and that would be about fifteen years—fourteen years. I could could not say as to the pass books that were in use prior, whether the pass books contained this provision about out of town items accepted subject

to final payment, but confining it to since I have been there I think prior to 1920 the pass books contained this provision about out of town items accepted subject to final payment. That is the usual and customary method of dealing between the First National Bank and the City of Douglas with reference to all checks,—they are taken subject to final payment, and if they are not paid we charge them back to them. That is just the same practice that the Federal Reserve Bank adopts with us when we in turn transmit to them. Under their deferred availability schedule they place the given item to our credit at the end of so many days, depending upon the distance, but even then if it is not paid they charge it back to us.

CROSS EXAMINATION:

This provision printed on our pass book is not the only provision which our bank has with reference to the acceptance of checks for collection; it is the only provision it had at that time.

The Federal Reserve Bank of Dallas sends items direct to our bank for collection. It has engaged in the practice of sending cash items to our bank for collection ever since we became a member, from the inception of the system. I think I am familiar with the practice and custom of Federal Reserve Banks in sending cash items direct to the bank on which drawn at all the dates referred to in this suit. In remitting for those items sent us we send the Federal Reserve Bank a check on themselves. We have other options,—I think we sould send a check on El Paso, any other El Paso bank.

MR. PETICOLAS: I think, if the Court please, perhaps that question is a little too narrow; I doubt if the custom between the Federal Reserve Bank and this particular bank would be governing on the question he is

addressing himself to; it is general custom, it seems to me, that governs.

THE COURT: I take it that this testimony has another purpose, to show that this bank knew the practice of this Federal Reserve Bank of collecting cash items, and it was similar to the one used in this instance with the bank at Willcox; I suppose that is the purpose of it.

MR. STROUD: That is the purpose of it, your Honor.

THE COURT: I overrule the objection; go ahead.

(The witness): We could send them a check on another bank in El Paso, or we could send them cash if we didn't have funds there to cover in our reserve account. I believe we can also send them a check on a reserve city clearing house, but I am not familiar with that part of it because we have always sent them El Paso funds. You mean by a check on a reserve city clearing house would be a check on the clearing house bank here in El Paso?

MR. STROUD: No, I mean a bank located at Dallas, Fort Worth, San Antonio, or Houston.

THE WITNESS: Well, we have no accounts there.

Q (Mr. Stroud): Now, the character of remittance which you make for your cash letters is entirely at your option within that scope, is it not, Mr. Graves?

A That is, we could send them on Dallas? I am not sure about that, we have never had an account and never followed that part of it.

The Federal Reserve Bank never demanded that we send them cash.

It is not absolutely the universal custom in this entire section of the country for banks sending cash items to the drawee bank for collection to accept in payment

therefor remittance drafts. I have known an instance where banks send items to their agent and demanding cash from the drawee bank, it was presented to the drawee bank by the representative of the bank. I do not recall positively whether in my experience I have known of a bank sending checks direct to the bank on which they are drawn and demanding that that bank remit cash. We occasionally send items direct to the bank on which they are drawn, for collection; we did not demand that that bank send us cash in payment of those items. It is according to our instructions whether they remit by draft; they may remit to our correspondent in some city,—that is what they ordinarily do. I presume they remit to our agent by draft. I think that practice is generally followed by banks to send direct to the bank on which drawn, for collection.

During December of 1920, and January and February of 1921, I was entirely familiar with the manner of handling checks with the Federal Reserve Bank in Dallas. I understood thoroughly the meaning of deferred availability. I understood that to mean that the Federal Reserve Bank had, from experience and investigation, determined the average number of days that was required within which to collect a check on a given point.

Q And that when the Federal Reserve Bank received a check from your bank that it would give your bank credit for that check at the expiration of that time regardless of whether the check was collected or not?

A No, I did not know what the rule was of the Federal Reserve Bank in accepting payment from non-member banks, and I took it for granted that the non-member bank would be required to do what we were compelled to do.

I knew that our items were credited to us at the expiration of the deferred availability schedule always.

It is a fact that in our letter transmitting this item to the Federal Reserve Bank of Dallas that we made a notation on there that that item would be available in three days; if it was a four day item it would probably be written there four days.

It is a fact that prior to December of 1920 we had received from the Federal Reserve Bank of Dallas its Circular No. 3, series of 1920. I think I was fully familiar with the contents of that circular.

With reference to my understanding as an experienced banker of the meaning of the words "final payment," I will say in our case it is when we receive the cash. For instance, if we receive a check on the Bank of Douglas from a correspondent of ours that check is paid when they receive definite information of payment from the bank on whom it is drawn; in other words, as an experienced banker my understanding of the words "final payment" among bankers is cash, exclusively.

I first learned that the Central Bank of Willcox was in a bad or insolvent condition when we heard it was closed; I had not heard anything about it before that time. It is not a fact that I knew of the condition of the Central Bank of Willcox prior to the time we received this check from the City of Douglas. With reference as to whether I told Mr. Weiss and you (Mr. Stroud) that it was generally known out in that country that that bank was in poor condition, I will say that I do not recall any such language as that. There was talk elsewhere but I didn't know anything about it. Nobody in our bank that I know of knew anything about it. So far as I know the bank was a perfectly solvent institution.

Willcox is about seventy miles north and east of Douglas. I do not recall the mileage from El Paso to the City of Douglas; something like two hundred and eighty miles I believe, east from Douglas.

The First National Bank of Douglas at the times re-

ferred to in this suit, or never has, sent all of its items to the Federal Reserve Bank of Dallas for collection. It is entirely optional with the First National Bank of Douglas whether it sends its items to the Federal Reserve Bank of Dallas or some other agent; we can send them anywhere we please. In sending these items to the Federal Reserve Bank at Dallas, or its El Paso Branch, that was an entirely voluntary action on our part, in order to keep up our federal reserve. Sure, we could have done that by mailing cash in or transferring from other banks, any other way we wanted to; I could have brought it down there.

There is a railroad line running between Douglas, Arizona, and Willcox, Arizona, indirectly,—that is, the road runs to Kelton and change cars, and at Cochise, and finally arrive at Willcox. At the present time I think the trains run every other day. I don't know how it was in December of 1920 I do not recall. If I had had any question about the check I would not have accepted it even subject to final payment; we would have taken it for collection.

I received notice on January 12th, 1921, that this remittance draft drawn on the Central Bank of Phoenix was dishonored, and following that notice on the 12th of January I think it was on the 18th of January that we charged the account of the City of Douglas with the amount of this item of $5,000.00; it was either the 17th or 18th of January, and then we followed that with this letter of the 18th advising them of this charge.

We had some correspondence with the Federal Reserve Bank of Dallas, or its El Paso Branch, with reference to the charging back of this item. That is my signature (indicating on letter shown witness by counsel).

MR. STROUD: We offer this letter.

MR. PETICOAS: I think the next to the last para-

graph is objectionable, your Honor. This is a suit by the plaintiff City of Douglas, and the expression of an opinion by Mr. Graves of the First National Bank it seems to me is merely a legal conclusion that could not have any binding effect in this case of any sort, and if so it is purely irrelevant.

THE COURT: Let me see it. What is the purpose of offering this?

MR. STROUD: If the Court please, our position is that we had a definite contract with the First National Bank of Douglas which is expressed in this Circular No. 3, which specifically covers the handling of this transaction, and that after this deferred credit had been given the First National Bank it was subsequently charged back, the amount credited was subsequently charged back to the First National Bank of Douglas, and this letter is a recognition on the part of the First National Bank of Douglas that we were entirely within our rights in charging it back because of that agreement under which we undertook collection.

THE COURT: This letter hardly goes that far. It is a recognition of the regulations, and as to what they understood the regulations to authorize. It does not undertake to state what the law is upon that proposition, but goes on to state what the law would have been had a member bank on non-member bank done the same thing. I will admit that. Of course, if that paragraph runs counter to the law I will disregard it.

MR. PETICOLAS: If you will disregard that part of it I don't care anything about it, even if he expressed a definite opinion it wouldn't amount to anything.

THE COURT: It is not exactly an opinion there as far as this case is concerned, as I understand it, because this was handled by the Federal Reserve Bank. It is

merely recognition of the regulations that they seem to be aware of.

(The plaintiff thereupon introduced the letter in evidence, same being marked Dft's. ex. 1, and being in words and figures as follows):

THE FIRST NATIONAL BANK
DOUGLAS, ARIZONA.

B. A. Packard, President
T. E. Pollock, Vice President
E. W. Graves, Cashier
A. B. Packard, Asst. Cashier
Wm. Alberts, Asst. Cashier

January
Twenty-first
1921

Deft's ex 1.

Mr. W. C. Weiss. Manager,
Federal Reserve Bank,
El Paso, Texas.
Dear Sir:

Referring to your file No. 220-5, letter from Mr Crump to our Mr. Hartley, and which I presume was really a reply to my letter of January 13th:

We charged our depositor with the amount $5.000 and credited it to the Federal Reserve Bank January 19th.

I think you will agree with me however that we should have something definite to offer as a voucher to our depositor which he can transmit to the drawer to substantiate the debit to the account, particularly as the check we sent you for collection was returned as a paid voucher to the drawer by the Central Bank of Willcox in his December 1920 statement of account. In addition to such a voucher, will you kindly send us for our protection a definite statement of all facts in reference to the check

in question showing date of its receipt by you, date of supposed payment, description of check received by you in settlement therefor and manner of handling the same and date of its dishonor.

While we realize of course that under the Federal Bank regulations you are authorized to handle this item as you did, I presume you are fully aware that a similar manner of handling an item by a member or non-member bank would in all probability be considered negligence, the preponderance of court decisions being to that effect.

Mr. Crump's letter states that you have given us your full record of handling the item, but such advices as we have do not give it in the detail we now ask for and which, owing to all the circumstances, I feel that we may require.

Very truly yours,
(Signed) E. W. Graves
Vice President.

EWG:M

(The witness): This is a copy of Circular No. 3, Series 1920, about which we have talked.

(The plaintiff thereupon introduced in evidence Circular No. 3, Series of 1920, same being marked Deft's ex 2, and is in words and figures as follows):

FEDERAL RESERVE BANK OF DALLAS — Circular No. 3 Series of 1920

Defts ex. 2.

DALLAS, TEXAS, February 18, 1920

IMPORTANT
TRANSIT OPERATIONS

TO MEMBER BANKS OF DISTRICT NUMBER ELEVEN:

This circular supersedes all previous circulars governing the clearing and collection of checks and the same general provisions herein outlined are applicable with both this bank and its branches.

The clearing house regulations of the Federal Reserve Board contains the following language:

> "Any further requirements that the Board may deem necessary will be set forth by the Federal Reserve Banks in their letters of instructions to their member and clearing member banks. Each Federal Reserve Bank will also promulgate rules and regulations governing the details of its operations as a clearing house, such rules and regulations to be binding upon all member and non-member banks which are clearing through the Federal Reserve Bank."

EFFECTIVE MARCH 1, 1920, THE NAME OF THE "DISTRICT CLEARING HOUSE DEPARTMENT" WILL BE CHANGED TO THE "TRANSIT DEPARTMENT," and its operations will be conducted as follows:

OUTGOING CASH LETTERS.

Outgoing cash letters from the Federal Reserve Bank of Dallas, or its branches, to its members, will be forwarded with a SETTLEMENT CHECK attached for the total amount of the letter.

Upon receipt, this SETTLEMENT CHECK must be detached, dated, officially signed and returned immediately in the self-addressed, stamped envelope enclosed with the cash letter.

This SETTLEMENT CHECK will serve as an order to charge the total of the cash letter to the member bank's reserve account and as an acknowledgement of receipt as at present.

The amount of this settlement check should not be changed. Any errors should be noted in an accompanying letter and correcting entries will be made upon re-

ceipt of the letter by us. Return items should be handled as shown below.

The SETTLEMENT CHECK will be charged to the account of the member bank when received by us, but when it is found that a prompt return of the Settlement Check has not been made, the amount of same will be debited in the same manner as if the Settlement Check had been received.

Nothing should be enclosed in the distinctive envelope with the Settlement Check except letters calling attention to any errors, but in order to offset the charge of a settlement check to its reserve account, a member bank may send, in the same mail for immediate credit, any of the following:

(a) Drafts on members of, and made payable through the Reserve City Clearing House.

(b) Drafts on any bank in the city from which our cash letter was received.

(c) Cash, when prepared and forwarded under regulations established by the Federal Reserve Bank of Dallas (See our Circular on this subject).

(d) Return items:

Items sent in error, unpaid items originating in other districts or "DCH-4" advice of items returned direct to other banks. (Instructions on cash letters must be followed regarding protesting and advising of unpaid items).

A Branch of the Dallas Post Office will be located in the Federal Reserve Bank of Dallas, known as "Station K." To insure prompt handling, all envelopes should include, in the address, the words STATION K, otherwise a delay in handling will result.

INCOMING CASH LETTERS.

Each incoming cash letter received by the Federal Reserve Bank of Dallas, or its branches, will be credited

to the member bank's reserve account according to collection time schedules. On letters containing deferred credit items, advice will be sent showing date reserve account will be credited.

BANKS MAKING ASSORTMENT OF THEIR SENDINGS TO US INTO LETTERS OF THE SAME AVAILABILITY, ACCORDING TO TIME SCHEDULES, WILL RECEIVE THE BENEFIT OF THE SHORTEST COLLECTION TIME.

When it is desirable, in order to save time, arrangements may be made with the Federal Reserve Bank of Dallas by member banks for direct routing of their items to the Head Office or Branch in the 11th Federal Reserve District outside of their territory, or to other Federal Reserve Banks or Branches, for credit at the Head Office or Branch to which they are attached.

Credit for incoming cash letters will be given as follows:

IMMEDIATE CREDIT

Letters containing only—

(a) Checks and drafts drawn on banks located in Dallas, El Paso and Houston when received at these respective cities as follows:
Dallas—prior to 10 a. m.—Saturday 9 a. m.
El Paso—prior to 10:15 a. m.—Saturday 10:15 a. m.
Houston—prior to 11:30 a. m.—Saturday 10:30 a. m.
(These hours are based upon the present clearing hours of the cities named and are subject to change).

(b) Drafts drawn on members of, and when marked payable through the Reserve City Clearing House, when received at Dallas or Houston prior to 10 a. m., Saturday 9:30 a. m.

(c) Drafts drawn on Federal Reserve Bank of Dallas or its branches when received prior to closing time.

(d) Checks drawn on Treasurer of U. S. when received prior to closing time.

(e) Matured coupons from U. S. Government bonds sent in separate letter by registered, insured mail direct to our Fiscal Agency Department, when received prior to closing time.

ONE DAY DEFERRED CREDIT

Letters containing only—

(a) Items listed under "Immediate Credit" paragraphs (a) and (b) received after the hours specified and prior to closing time.

(b) Items received in Dallas—drawn on banks in Houston, not payable through Reserve City Clearing House—or vice versa—when received prior to 12 M.—Saturdays 11 a. m.

TWO DAYS DEFERRED CREDIT

When received prior to 12 M.—Saturdays 11 a. m. letters containing only—

(a) Items received in Dallas or Houston, drawn on banks in El Paso—or vice versa.

(b) Items drawn on banks on 2 day collection schedule—(list to be furnished).

THREE DAYS DEFERRED CREDIT

When received prior to 12 M.—Saturdays 11 a. m.

Letters containing miscellaneous items, received at Dallas, Houston or El Paso drawn on banks in their respective territories, not included in the above.

FOUR DAYS DEFERRED CREDIT

When received prior to 12 M.—Saturdays 11 a. m.

Letters containing unassorted items drawn on banks in entire 11th Federal Reserve District.

Therefore care should be taken to sort all items according to time schedules.

VARIOUS DEFERRED CREDIT

Letters containing items drawn on banks in other

Federal Reserve districts may, in the discretion of the Federal Reserve Bank. be deferred for longest period of any item contained therein—as per schedule to be furnished. Therefore, the proper sorting of all items is important.

Each letter should plainly indicate when the items enclosed are expected to be available as reserve, such as "Immediate Credit." "2 days," "3 days," etc. Business days only are to be counted in deferring—(a 2 day deferred letter, received by us Saturday would be available the following Tuesday.)

TERMS AND INSTRUCTIONS.

In handling items for member banks. the Federal Reserve Bank of Dallas, or its branches, will act as agent only. It is understood that each member bank authorizes the Federal Reserve Bank of Dallas, or branch thereof, to send checks for collection direct to banks on which checks are drawn, and except for negligence the Federal Reserve Bank of Dallas assumes no liability until funds are actually in its hands, and is authorized to charge back the amount of any item for which it has not received final payment, including items lost in transit.

In order to secure uniform instructions, it is understood that all checks and drafts handled by the Federal Reserve Bank of Dallas, unless listed in a separate collecton letter and plainly marked "Collection Items" are received under the following conditions:

(1) All unpaid items of $10.00 and over to be protested unless stamped on the face N. P. followed by the A.B.A. number of forwarding bank in the following form (N.P. 32-3) or to bear the impression of a similar stamp of a preceding bank endorser.

(2) Advice to be wired of dishonor of all items of $500.00 or over giving name of bank endorsing to Federal Reserve Bank of Dallas or Branch. All

costs of messages, reporting items unpaid, will be borne by the Federal Reserve Bank.

(3) Any checks which have been protested for non-payment will not be handled as cash when put through for the second time.

(4) Only checks drawn directly on a bank will be handled as cash. Drafts drawn "payable at" or "payable through" a bank, or those drawn upon individuals, firms or corporations must be sent as collections.

(5) Any collection items enclosed in cash letters will be returned except those of $500.00 and over which will be entered for collection and the proceeds placed to the member bank's reserve account when paid.

(6) In order to facilitate checking transcripts, any errors found in member bank's cash letters will be corrected by a debit or credit to the member bank's account and no totals of incoming letters will be changed.

(7) The Federal Reserve Bank of Dallas will not be responsible for the fulfillment of special instruc tions attachee to checks sent in as cash—such checks should be forwarded as collection items.

The sending of items by member banks to the Federal Reserve Bank of Dallas or its branches, will be construed as an agreement to the terms stated herein and an acceptance of the provisions here detailed as to the liability of the Federal Reserve Bank of Dallas in handling transit business.

IMPORTANT SUGGESTION REGARDING ACCOUNTING SYSTEM.

For their own convenience and in their own interests,

Member Banks are urged to carry, on their general ledgers, two accounts with the Federal Reserve Bank: One of COLLECTED FUNDS (RESERVE ACCOUNT) and the other UNCOLLECTED FUNDS. All items forwarded to the Federal Reserve Bank for credit, should be charged into the uncollected funds account, and on the day when such items are available for reserve or checking purposes, (as may easily be determined from our time schedules and advices heretofore mentioned), they should be charged into the Reserve Account. This suggestion applies also to items available for immediate credit on receipt. Totals of letters containing such items should be deferred until the date the letters are due to reach the Federal Reserve Bank, on which date Uncollected Funds Account should be credited and the Reserve Account debited. Deferment of other items begins on date or receipt by the Federal Reserve Bank. This will enable member banks to determine accurately the amount of their available reserve balances, and if our transcripts are daily checked, member banks will be enabled to avoid penalties for deficient reserves. Experience demonstrates that numerous penalties might have been avoided by member banks had they followed this suggestion.

COLLECTION ITEMS.

Items for collection, when enclosed in a separate letter marked "Collection Items," will be received, entered for collection, forwarded and proceeds passed to the credit of the member bank when returns are received, less actual collection costs. Local items will be presented by messenger, or notice given, and the proceeds credited upon receipt. These collections will be made subject to the usual limitations as to liability. Only actual cost of collection, if any, will be deducted when the proceeds are accounted for, as the Federal Reserve Bank makes no charge for this service.

Respectfully,
R. L. VAN ZANDT,
Governor.

Approved: February 16, 1920.

R. L. Van Zandt, Chairman	)	
W. F. Ramsey	)	
Marion Sansom	)	Executive Committee.
W. B. Newsome	)	
B. A. McKinney	)	

CAUTION—The proceeds of a member bank's own draft on its correspondent (unless falling within the class of items noted herein as being available for immediate credit on receipt) are no more available to the Federal Reserve Bank or its branches than a check drawn on the member bank by one of its customers.

REDIRECT EXAMINATION

I know of the custom with reference to remitting in response to cash letters of the Federal Reserve Bank, and the requirements. I know of instances where they have required the payment of the cash. Those instances were the Miners and Merchants Bank of Bisbee, Arizona, and the Southern Arizona Bank & Trust Company, Tucson, Arizona; in those instances a letter was sent to the special agent at the point—the special agent of the Federal Reserve Bank, and that special agent of the Reserve Bank required the payment of cash from the Miners and Merchants Bank and the Southern Arizona Bank & Trust Company.

THE COURT: Was that the general practice of those institutions?

THE WITNESS: No, that was the ruling of the Federal Reserve Bank, they sent their checks on them, in the

case of the Miners and Merchants Bank, through the post office and collected cash over the counter. I don't know but what they had a special agent there at one time. In the case of the Southern Arizona Bank & Trust Company the checks were sent by express to the agent of the express Company in Tucson, and he demanded cash from the Southern Arizona Bank & Trust Company, which was remitted, I presume, to the Federal Reserve Bank.

THE COURT: Are those isolated instances, or was that the practice of the Federal Reserve Bank in collecting from those institutions?

THE WITNESS: I am not fully posted on that; I simply know of those two cases, and it was done in a great many instances in the East.

By Mr. Peticolas:

With reference to their requirements of the member banks that they remit either in El Paso exchange, or by check on our reserve in the Federal Reserve Bank itself, the effect of the requirements of a check on the Federal Reserve Bank itself is to require cash.

RECROSS EXAMINATION:

The items to which I refer in Bisbee and Tucson were not sent direct to the bank on which drawn; they were collected through an intermediate agent. I believe, however, that the Federal Reserve Bank at one time had its own agent, appointed an agent in Bisbee.

I don't know the reason prompting that manner of collection; I know simply it was done.

(Witness excused)

(Court thereupon recessed from 12:04 P. M. to 2:00 P. M.

HERBERT LOWDERMILK,

a witness for the Plaintiff, having been sworn under the rule, testified as follows:

DIRECT EXAMINATION:

My name is Herbert Lowdermilk. I live in Phoenix, Arizona. I have lived in Willcox, Arizona, and was there associated with the Willcox Bank & Trust Company, nine years in Willcox, was gone a year, and back to Willcox as Receiver of the Central Bank of Willcox. I am now Receiver of the Central Bank of Willcox, appointed by the District Court of Cochise County, Arizona.

I know of the Central Bank of Phoenix. Both the Central Bank of Willcox and the Central Bank of Phoenix are insolvent and in the hands of a receiver. The Central Bank of Willcox closed January 7th, 1921,—failed to open on the 8th of January, 1921. The Central Bank of Phoenix failed on March 19th, 1921, was re-opened on July 21st, 1921, as the Bank of Phoenix, and then the Bank of Phoenix failed on February 27th, 1922.

The Central Bank of Willcox was at one time a branch of the Central Bank of Phoenix, operating as the Central Bank of Phoenix, Willcox Branch, but in the fall of 1917 the Central Bank of Willcox was organized as an independent bank. In December, 1920, it was an independent bank.

Perry N. Williams is the present receiver of the Bank of Phoenix, and I am assistant to the Receiver of the Bank of Phoenix.

I know the officers and officials of the Central Bank of Willcox at the time it failed. J. H. Reid, Jr. was the Cashier, and S. P. Brown was the President. They are both now in the penitentiary at Florence.

When the Central Bank of Willcox failed the records

of the bank were turned over to the State Bank Examiner in charge, and on January 26th, 1921, they were received by me from the State Bank Examiner in charge, received by me as Receiver. Our statutes in Arizona provide first for an examiner taking charge, and subsequently for a receivership, and those records went first to the Examiner and then were turned over to me. The records have been in my possession since January 26th, 1921. Those books purported to contain a daily record of the business of the bank, and the entries in them are original entries, and the entries in them relate to the business that they purport to relate to. I have had something to do with the transactions since January 26th, 1921, founded on those books, and testing them in that way I found them to be correct. I am the present custodian of those records, and have been custodian of them since the Examiner turned them over to me, and they have been in my charge and possession since that time.

This document (indicating) is the individual ledger sheet of Guy C. Welch, Treasurer Cochise County, and it shows what his balance was in late December, 1920. The balance shown on December 30th, 1920, is $24,237.90.

Among the records of the Central Bank of Willcox I found a check which has been introduced here, drawn by the Treasurer of Cochise County, payable to the City of Douglas, for $5,000.00. That check was sent back to the Treasurer of Cochise County in a statement. The records of the Central Bank of Willcox show whether or not it had been charged against the account of the Treasurer of Cochise County; I have that document, it is the same document, and that is the entry there (indicating).

(The plaintiff thereupon introduced in evidence the Individual Ledger Sheet of Guy C. Welch, Treasurer Cochise County, same being marked Plf's ex. 11, and being in words and figures as follows):

SHEET NO. ..... Plf's Ex. 11

NAME GUY C. WELCH, TREASURER
ADDRESS COCHISE CO.
TOMBSTONE,

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
							Feb 28	32,667.67
32,667.67	Mar 4	1,000.00—					Mar 4	31,667.67*
31,667.67	Mar 11				Mar 11	54.55	Mar 11	31,722.22*
31,722.22	Mar 25	31.66—	3,015.00—		Mar 25		Mar 25	28,675.56*
28,675.56					Apr 26	47.78	Apr 26	28,723.34*
28,723.34	Apr 28	3,675.56—					Apr 28	25,047.78*
25,047.78					May 8	8,449.10	May 8	33,496.88*
33,496.88					May 15	44.21	May 15	33,541.09*
33,541.09	May 25	559.10—					May 25	32,981.99*
32,981.99					Jun 3	50.17	Jun 3	33,032.16*
33,032.16	Jun 15	1,281.18—					Jun 15	31,750.98*
31,750.98	Jun 17	6,750.98—					Jun 17	25,000.00*
25,000.00					July 24	46.35	Jul 24	25,046.35*
25,046.35					Aug 7	42.45	Aug 7	25,088.80*
25,088.80	Aug 9	281.51—					Aug 9	24,807.29*
24,807.29	Aug 10	37.50—	235.50—	153.00—	Aug 10		Aug 10	24,381.29*
24,381.29	Aug 11	154.69—					Aug 11	24,226.60*
24,226.60	Aug 12	252.95—	135.00—	738.75—				
		241.60—					Aug 12	22,858.30*
22,858.30	Aug 16	678.08—			Aug 16		Aug 16	22,180.22*
22,180.22	Sep 7	2,000.00—					Sep 7	20,180.22*
20,160.22	Sep 18				Sep 18	39.34	Sep 18	20,219.56*
20,219.56	Sep 20	576.25—					Sep 20	19,643.31*
19,643.31	Sep 23	394.87—					Sep 23	19,248.44*
19,248.44					Oct 26	33.23	Oct 26	19,281.67*
19,281.67					Nov 3	32.61	Nov 3	19,314.28*
19,314.28					Nov 6	15,202.86	Nov 6	34,517.14*
34,517.14	Dec 17	8.00—					Dec 17	34,509.14*
34,509.14	Dec 24	185.97—	50.00—				Dec 24	34,273.17*
34,273.17	Dec 28	5,000.00—					Dec 28	29,273.17*
29,273.17	Dec 30	144.60—	5,000.00—		Dec 30	109.33	Dec 30	24,237.90*

Among the records of that bank I found a document purporting to be a Cash Letter from the El Paso Branch of the Federal Reserve Bank. Witness produced the document). With reference to whether the pencil memoranda on this Cash letter was on it when I got it I will say this deduction of $147.32 was on it when I got it, and also these two figures here, that is apparently two checks returned unpaid; the others are my own figures.

MR. PETICOLAS: I introduce in evidence, then, if the Court please, the portions of this Cash Letter which are not objected to, as follows: (Reading):

Cash Letter. Dec. 27 1920. El Paso Branch
Transit Department
Federal Reserve Bank of
Dallas.

El Paso, Texas.
Central Bank,
Willcox,
Arizona.

Gentlemen:

We enclose herewith for collection and returns items as listed below:

Protest all items over $10.00 except those bearing this stamp N.P. 88-1 or similar authority of a preceding bank endorser. Telegraph non-payment of items $500.00 or over, giving name of bank endorsing to this bank."

In the typewritten portion appears a tabulation of collections; under the head line "Last Endorser" are the figures "69" and under the head "Amount" are the figures $5,000.00.

(Note: The document in question was marked Plf's
(Ex. 12, and only the portion introduced in
(evidence as material to this case is copied above.

* * *

MR. STROUD: The Court understands only the typewritten portion is being offered in evidence, and not the writing or figures made by the witness?

MR. PETICOLAS: As I understand it, I only offered what I read to your Honor.

THE COURT: That is the way I understand it.

(The Witness): With reference to that item of $5,000.00 that is the County Treasurer of Cochise County's check.

Among the records of the Central Bank of Willcox I found documents of that bank which would indicate that drafts drawn on it, or sent to it for collection, or sent by it have been unpaid and protested with the knowledge of the El Paso Branch of the Federal Reserve Bank. (The witness produced a document). I know Mr. Reid's handwriting; that is his handwriting on that check.

MR. CULWELL: I don't think that is material to any issue here; it seems to be a remittance draft drawn on the Central Bank of Phoenix, in July of 1920, and it was protested. I think it is immaterial to any issue here.

MR. PETICOLAS: We have alleged in the petition that the Federal Reserve Bank knew, or had reason to know, that the Central Bank of Willcox was in dangerous circumstances, or as Mr. Culwell used the expression, badly extended. This check is for $19,000.00 it failed to pay, and there are two more of the same kind that we propose to offer, one of $15,000.00 and one for $3615.20 that were unpaid, with the knowledge of the Federal Reserve Bank, and although this was in July, 1920, the objection to it on point of time would not go to it on its admissibility, it would go to its weight.

THE COURT: What is the date of the transaction involved in this case?

MR. PETICOLAS: December 20, 1920.

THE COURT: This was some months before?

MR. PETICOLAS: Yes, sir, some months before.

THE COURT: Was that one of the bank drafts?

MR. PETICOLAS: This same sort of draft we have in this case, drawn by the Central Bank of Willcox, through its Cashier Reid, on the Central Bank of Phoenix, payable to the El Paso Branch of the Federal Reserve Bank of Dallas.

THE COURT: Protested for non-payment?

MR. PETICOLAS: Protested for non-payment.

THE COURT: I will overrule the objection.

(The witness): I have the other two drafts (producing). This is Mr. Reid's signature (indicating).

MR. PETICOLAS: I want to offer these all together, your Honor, as coming from the records of the Central Bank of Willcox, and the handwriting proved by the witness; also the copy of telegram in regard to them.

The first is a check dated July 19, 1920, payable to the El Paso Branch Federal Reserve Bank, for $19,167.00, drawn on the Central Bank of Phoenix, signed by J. H. Reid, Jr., Cashier, and duly protested. (Marked Plfs. Ex. 13).

The second is for $3615.20, drawn by Reid, Cashier, payable El Paso Branch Federal Reserve Bank, drawn on the Central Bank of Phoenix by the Central Bank of Willcox, duly protested. That is dated July 20th, 1920. (marked (Plfs. ex. 14).

The third is July 22nd, 1920, drawn by the Central Bank of Willcox on the First National Bank of El Paso, Texas, payable to the El Paso Branch of the Federal Reserve Bank of Dallas, for $15,000.00. That is duly

protested by Mr. Crump, the Cashier of the Federal Reserve Bank. (Marked Plf's. Ex. 15).

A telegram of July 31st, 1920. (Marked Plf's. Ex. 16).

A telegram of July 31st, 1920, from Central Bank of Willcox to Federal Reserve Bank, El Paso. (Marked Plf's. Ex. 17).

(The documents enumerated above were thereupon introduced in evidence by the plaintiff, and are in words and figures as follows):

TCBP THE CENTRAL BANK 91-100
of Phoenix. Plf's ex 1.3
WILLCOX, Ariz. July 19 1920 No. 995

Pay to the order of
El Paso beh Fed Res Bk Dallas $19167.00
(In red ink) Fees 3.50

Pay $19167 and 00cts Dollars
(In red ink)
19,170.50

To
THE CENTRAL BANK OF PHOENIX
91-7 Phoenix, Ariz. (Signed) J. H. Reid, Jr.
Manager
Cashier

(Written across the face in red ink):
Protested for non-payment
July 27, 1920
M. L. Taylor,
Notary Public.

(Endorsed on reverse side):
(in pencil) Wired
7-29-20
L. H.
Pay to

the Order of
Any Bank of Banker
Prior Endorsements Guaranteed
July 21 1920
88-1 EL PASO BRANCH 88-1
Federal Reserve Bank
of Dallas.
El Paso, Tex.

(Stamped across this endorsement):
Aug 2 1920
Cancelled.
88-1

Pay to the order of
Any Bank, Banker or Trust Co.
Prior Endorsements Guaranteed.
Jul 24 1920
LOS ANGELES BRANCH
16-16 Federal Reserve Bank 16-16
of San Francisco

(Stamped across this endorsement):
CANCELLED

Pay to the order of any Bank
or Banker
88-1 Prior Endorsements Guaranteed 88-1
AUG 2 1920
El Paso Branch
Federal Reserve Bank of Dallas
El Paso, Texas.

(Perforated stamp through draft, same being unintelligible).

(Attached to above draft is PROTEST, in words and figures as follows):

PROTEST.

United States of America)
The State of Arizona.) ss.
County of Maricopa)

BY THIS PUBLIC INSTRUMENT OF PROTEST BE IT KNOWN:

That on this the 27th day of July, A. D. 1920, at the request of THE CENTRAL BANK OF PHOENIX I, M. L. Taylor, a Notary Public, duly commissioned and sworn, residing in the County and State aforesaid, did present the original draft which is hereto annexed, to THE CENTRAL BANK OF PHOENIX, residing at Phoenix, Arizona and demanded payment thereof, which was refused, stating:

Drawn against uncollected funds.

WHEREUPON, I the said Notary, at the request aforesaid, did Protest, and do hereby publicly and solemnly Protest against The Central Bank of Willcox, maker of said draft and against all others concerned for exchange, re-exchange and all costs, damages, charges and interest incurred and to be incurred for want of payment of said draft, and I, the said Notary, do hereby certify that on this 27th day of July, A. D. 1920, notice in writing of the presentation, demand, refusal, on this day and Protest of said above-mentioned draft has been served upon

Central Bank of Willcox, Willcox, Ariz.

Federal Reserve Bank, Los Angeles,

Federal Reserve Bank, El Paso Branch, Dallas, Texas.

Thus done and protested in the County of Maricopa aforesaid and my notarial seal affixed the day and year first above written.

Signed (M. L. Taylor

(Seal) Notary Public.

(My Commission Expires 1-31-23.)

Endorsed on reverse side): No. .....

PROTEST

Order

Protest $.....

Recording $.....
Notice $.....
(Signed) M. L. Taylor,
Notary Public.

(Seal)

(Stamped on reverse side):

Received
July 31 P. M.
El Paso Branch
Federal Reserve Bank
of Dallas.
(Perforated stamp, unintelligible).

TCPB THE CENTRAL BANK 91-100 Plf's ex. 14
of Phoenix
WILLCOX, ARIZ. July 20, 1920 No. 998
Pay to the order of
El Pas bch Fed Res Bk. $3615.20
(In red ink)
Protest Fees 3.50

Pay $3615 and 20 cets DOLLARS
(In red ink) 3618.70
To
THE CENTRAL BANK OF PHOENIX,
91-7 Phoeniz, Ariz. (Signed) J. H. Reid, Jr.
Manager
Cashier
(In pencil) Drawn against uncollected Funds 88-1

(Written across the face of above draft, in red ink):

Protested for non-payment
July 29, 1920
M. L. Taylor,
Notary Public.

(On reverse side): (in pencil): Wired
7-30
L.H.

Pay to the
order of any Bank of Banker
Prior Endorsements Guaranteed
JUL 23 1920
88-1 EL PASO BRANCH 88-1
Federal Reserve Bank of Dallas
El Paso, Tex.

Pay to the order of
Any Bank, Banker or Trust Co. (Stamped through
Prior Endorsements Guaranteed this endorsement)
JUL 26 1920 CANCELLED.
LOS ANGELES BRANCH
16-16 Federal Reserve Bank 16-16
of San Francisco.

3
Jul
C 29 B
1920

88-1 Pay to the order of
any Bank or Banker 88-1
Prior Endorsements Guaranteed
AUG 3 1920
EL PASO BRANCH
Federal Reserve Bank of Dallas
El Paso, Texas.

(Attached to above draft):

UNITED STATES OF AMERICA
State of Arizona.
Phoenix, Ariz. July 29, 1920. 19—

Please take notice that a certain draft dated July 20,

1920, for the sum of Thirty-six hundred fifteen & 20-100 Dollars, payable on demand drawn by Central Bank of Wilcox, Wilcox, Ariz., in favor of El Paso Branch Federal Reserve Bank, indorsed by El Paso Branch Federal Reserve Bank, El Paso, Texas, and Los Angeles Branch Federal Reserve Bank, Losangeles, Calif. was this day presented by me and payment thereof demanded, which was refused, and the said draft having been dishonored, the same was this day PROTESTED by me for the non-payment thereof, and the holders look to you for the payment of the same, together with all costs, charges, interest, expenses and damages already accrued, or that may hereafter accrue thereon.

(Signed) M. L. Taylor
Notary Public.

(Seal)

My commission expires January 31st, 1923.

To Central Bank of Wilcox,
Wilcox, Arizona.

(Attached to above draft):

PROTEST

UNITED STATES OF AMERICA)
THE STATE OF ARIZONA,) ss.
County of Maricopa.)

BY THIS PUBLIC INSTRUMENT OF PROTEST BE IT KNOWN:

That on this 29th day of July, 1920, A. D. 19—, at the request of The Central Bank of Phoenix, Arizona, I M. L. Taylor a Notary Public, duly commissioned and sworn, residing in the County and State aforesaid, did present the original Draft, which is hereto annexed, to The Central Bank of Phoenix, Phoenix, Arizona, residing at

..... and demanded payment thereof, which was refused, stating:

WHEREUPON, I the said Notary, at the request aforesaid, did Protest, and do hereby publicly and solemnly Protest against The Central Bank of Wilcox, Wilcox, Ariz., maker of said draft, and against all others concerned for exchange, re-exchange and all costs, damages, charges and interest incurred and to be incurred for want of non-payment of the said draft, and I, the said Notary, do hereby certify that on this 29th day of July, 1920, A. D. 19—, notice in writing of the presentation, demand, refusal, on this day and Protest of said above-mentioned draft served upon

Central Bank of Phoenix, Ariz., El Paso Branch Federal Reserve Bank, El Paso, Texas, Los Angeles Branch Federal Reserve Bank, Los Angeles, California, and Central Bank of Wilcox, Wilcox, Arizona.

Thus done and protested in the County of Maricopa aforesaid and my notarial seal affixed the day and year first above written.

(Signed) M. L. Taylor
(Seal) Notary Public.
(My Commission Expires 1-31-1923.)

(Perforated stamp, uninteligible).

(On reverse side): No. ———

PROTEST
Order

Protest $———
Recording $———
Notice $———

(Signed) M. L. Taylor
(Seal) Notary Public

(Stamped):

RECEIVED
AUG 2 P.M.
El Paso Branch
Federal Reserve Bank
of Dallas

(In pencil) O.K. CENTRAL BANK OF WILLCOX

91-100

Willcox, Arizona — Plf's ex. 15

Willcox, Ariz. July 22 - 1920 — No. 1113

Pay to the order of El Paso bach — Fees — 1.81

Federal Reserve Bk Dallas — $15000.00

Pay $15000 and 00 cts. — DOLLARS — 15001.81

First National Bank

88-4 El Paso, Texas. (Signed J. H. Reid, Jr. President

Cashier

(In pencil on face of draft):

Presented 7-27 to E.W.Kayser.
Payment refused
A.S.
Presented 7-29 P.M.
to E. W. Kayser
Payment Refused.
H.K.D.

(Stamped across face of draft):

Protested for Non-payment
Jul 26 1920 (Signed) M. Crump
Notary Public, El Paso County, Texas.

(Endorsed on reverse side of draft):

EL PASO BRANCH
Federal Reserve Bank of Dallas
El Paso, Texas
Allen Boyls

Assistant Cashier.
Paid Through
El Paso
Clearing
1 House 1
EL PASO
BRANCH
Federal Reserve
BANK OF
DALLAS
Aug 7 1920

(Perforated stamp through check): P A I D
* 8 07 20

. . . . .

(Attached to draft): Protest — Class 4.

THE UNITED STATES OF AMERICA
State of Texas, County of El Paso

BY THIS PUBLIC INSTRUMENT OF PROTEST BE IT KNOWN, That on the 26 day of July, A.D., 1920, at the request of

EL PASO BRANCH FEDERAL RESERVE BANK OF DALLAS, TEXAS

holder of the original check, whereof a true copy is on the reverse hereof written, I, M. CRUMP, a Notary Public in and for the County of El Paso, State of Texas, duly commissioned by letter patent under the Great Seal of the State aforesaid, and sworn, presented said check at the office of First Nat Bk El Paso Texas, and to E. W. Kayser, V.P. and demanded of him payment therefor, which was refused not sufficient funds.

WHEREUPON, I, the said Notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or mak-

8
7

er of the said check as against all others whom it doth or may concern, for all exchanges, re-exchanges, damages, costs, charges and interests suffered or to be suffered for want of payment of the said check.

I HEREBY CERTIFY, that on this 26 day of July, A. D. 1920, I did issue Notices of the Protest of the above described check for non-payment, addressed as follows:

Central Bank of Willcox. Willcox, Ariz.

First Nat. Bk. El Paso, Texas

Federal Reserve Bank Branch, El Paso Texas

and deposited all in the Postoffice in El Paso, Texas, same day, postage paid.

IN TESTIMONY WHEREOF, I grant these presents under my signature, and the impress of my Seal of Office, at El Paso, Texas, on the day and year first above written.

(Seal) (Signed) M. Crump
Notary Public.

(Perforated stamp) P A I D
* 8 07 20

(On reverse side)

COPY OF CHECK

$15000.00 July 26th, 1920.

Central Bank of Willcox
Willcox, Arizona.

Pay to the order of El Paso Bch Federal Reserve Bank
Dallas Fifteen thousand ..... DOLLARS
Value received.
To First National Bank El Paso, Tex.

No. 1193 Due .....

ENDORSEMENTS

Federal Reserve Bank Branch, El Paso, Texas.

P R O T E S T

Check of
Central Bk of Willcox
Willcox, Arizona
Amount of Check
$15,000.00

F E E S

Protest	$1.00
Postage	.06
Notices	.75
	$1.81

Fees paid by Federal Reserve Bank, of
El Paso, Texas.

(Attached to draft, the following carbon copy of letter):

July 22, 1920

El Paso Branch
Federal Reserve Bank
El Paso, Texas
Gentlemen:

We are enclosing our El Paso exchange for the amount of Fifteen thousand dollars, ($15,000.00) to be deposited to the credit of the Federal Reserve Bank of Dallas for use of Farmers & Merchants Bank Leeray Texas

Kindly notify *Dallas* bank by wire when you receive this.

Thanking you we remain

Yours truly,

Cashier

(On Western Union Telegraph blank)

Received at Willcox, Arix.
10 S Y 16

EL PASO TEX 145P M JULY 31 1920

Plf's ex. 16

CENTRAL BANK OF WILLCOX
WILLCOX AZ
WIRE IMMEDIATELY WHAT WILL BE DONE TOWARD TAKING UP FIFTEEN AND NINETEEN THOUSAND DRAFTS PER CONVERSATION
FEDERAL RESERVE BANK
210PM

COPY OF
WESTERN UNION TELEGRAM

Plf's Ex. 17.

Willcox, Ariz.
July 31 20.

Federal Reserve Bank,
El Paso, Texas.

Mr. Brown will be in El Paso from Leeray this afternoon or Monday morning and will fix matter of drafts at that time.

Central Bank of Willcox.

During the time I was with the Willcox Bank & Trust Company the bank had some negotiations or correspondence with the El Paso Branch of the Federal Reserve Bank with reference to what we could remit in payment of cash letters. I can identify this letter of May 23rd, 1916, and this circular of June 16th, 1916. The letter is signed by Lynn P. Talley, Cashier, Federal Reserve Bank of Dallas, dated May 23rd, 1916, and is addressed to H. E. Dunlap, Cashier, Willcox Bank & Trust Company, Willcox, Arizona. I can't say positively whether that circular accompanied the letter of May 23rd, 1916; it would appear that the circular came alone. This was contained in the file of that correspondence from the Federal Reserve Bank of Dallas, from the records of the Willcox Bank & Trust Company.

(The plaintiff thereupon introduced in evidence the letter, same being marked Plf's. Ex. 18, and is in words and figures as follows):

FEDERAL RESERVE BANK
OF DALLAS

R. L. Van Zandt, Governor
J. W. Hoopes, Vice-Governor
Lynn P. Talley, Cashier
Sam R. Lawder, Asst. Cashier

May 23rd, 1916.

Plf's Ex. 18.

Mr. H. E. Dunlap, Cashier,
Willcox Bank & Trust Company,
Willcox, Arizona.

Dear Sir:

We appreciate your cordial letter of the 19th, replying to our circular of May 5th.

You are evidently under the impression that the new collection system is a membership proposition, and that member banks have the option of handling items on themselves when we send them, or not. All National Banks are members of this bank, and are required by the Federal Reserve Act and the regulations of the Board, to cover at par, checks on themselves which we send them, either by sending us checks on other banks, or by shipping us currency at our expense. It is not, therefore, a question as to whether or not the member banks will accept the proposition, though it may be a question as to whether or not they will use the facilities in collecting their own items as provided by the provisions of this act, by sending them to us.

When you consider that immediately upon the inauguration of the collection system, the Federal Reserve Bank will be in position to collect at par, checks on 7,600 National Banks and perhaps an equal number of State

Banks, the advantages of having checks on your bank circulate freely in the same way would probably be apparent to you. We are, therefore, enclosing another card, in the event you have misplaced the one previously sent you, and await your final decision with much interest.

Yours very truly,

(Signed) Lynn P. Talley
Cashier.

(The plaintiff thereupon introduced in evidence the Circular dated June 16, 1916, same being marked Plf's Ex. 19, and being in words and figures as follows):

FEDERAL RESERVE BANK
OF DALLAS

June 16, 1916.

Plf's Ex. 19

TO THE BANK ADDRESSED:

The Federal Reserve System, especially in its check clearing functions, is intended to benefit the Nation's commerce, and therefore no discrimination is desired or intended against non-member banks by making all checks on all National Banks circulate at par. The same privilege is available to all non-member banks, and whether or not checks on them are discriminated against by the public rests solely with the non-member banks.

To date we have made arrangements to collect at par, checks on 170 non-member banks in this District.

On May 2nd we sent you a letter offering the opportunity of receiving from us direct, checks on your bank and remitting us at par for them on day of receipt by your draft on some exchange center, or shipping us currency at our expense.

We believe that you, as well as ourselves, would prefer this method to any other that might be adopted. We also believe that you desire to give your customers the same

facilities and privileges enjoyed by the customers of 7,600 National Banks throughout the United States. That is to say, you would desire to make your customers' checks on your bank readily accepted the country over without exchange. This is possible by your signing the card containing the proposed agreement sent you in our letter of May 2nd and returning it to us, after which you may have printed on the blank checks furnished your customers, the following clause:

COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE BANK OF DALLAS

We shall shortly make formal announcement that our Check Clearing System will go into effect on July 5th covering this Federal Reserve District, and will be extended to the entire United States on July 15th. When this announcement is made, lists containing the names of non-member banks having made this arrangement will be sent to every National Bank in this Country, and to all other banks which are members of the Federal Reserve System.

If you desire to get this advantage, we emphasize the necessity of signing the agreement and returning it to us without delay.

Please let us have your reply promptly.

Respectfully,

R. L. Van Zandt,

Governor.

At that time the Willcox Bank & Trust Company, with which I was connected, was not a member of the Federal Reserve. Since we did not have a correspondent in Dallas we wanted to remit with El Paso exchange, remit on the First National Bank, who was our correspondent, and the final arrangement was that they would not accept these drafts on the First National Bank of El Paso unless

we made an arrangement whereby the drafts could be charged against the account of the First National Bank with the Federal Reserve Bank of Dallas, so we made such an arrangement. The practical requirement was that we should remit a check which in the last analysis was cashable on a reserve in one of their banks.

CROSS-EXAMINATION:

I was connected with the Central Bank of Phoenix,—not the Central Bank of Phoenix, but I am assistant to the Receiver of the Bank of Phoenix, which was formerly the Central Bank of Phoenix.

I have here the statement of the account between the Central Bank of Phoenix and the Central Bank of Willcox, between the dates of December 17th, 1920, and August 4th, 1921. I took that from the book of the Bank of Phoenix,—formerly the Central Bank of Phoenix. The balance, shown by this sheet, of the Central Bank of Willcox with the Central Bank of Phoenix on the 30th day of December of 1920 was $4232.40; on the 31st of December, 1920, it was $4236.00, and on January 3rd, 1921, it was $1964.30. On the 4th, 5th, 6th, and 7th of January, 1921, the account was overdrawn. At no time between December 30th, 1920, and January 7th, 1921, inclusive, did the Central Bank of Willcox have a sufficient balance to its credit with the Central Bank of Phoenix to have paid this draft for $5,000.00. May I state though that the draft was not $5,000; it was $6426.17.

MR. CULWELL: I had reference to this particular check.

THE WITNESS: Yes.

THE COURT: It included the $5,000.00, and other items?

THE WITNESS: Yes, sir.

At none of those dates that draft might have been presented to the Central Bank of Phoenix was there a sufficient fund there to the credit of the Central Bank of Willcox to take up the draft.

I am the only receiver there has been of the Central Bank of Willcox. Presumably, and from my search, I am prepared to say all records of that bank were turned over to me by the Banking Department; also all correspondence, whatever files belonged to the bank.

There have been three drafts introduced drawn by the Central Bank of Willcox that went to protest; I don't remember of any other drafts of that bank that went to protest. I was called upon to make a search for that purpose,—that is, I went through and found those three, and those were the only ones I found I was interested in. Those three drafts were subsequently paid, later. Between July and December, inclusive, up to this transaction, I am not sure whether it is a fact that none of its other drafts given to the Federal Reserve Bank of Dallas went to protest. I have no records that would indicate that the bank did not pay any of the bills that it owed the Federal Reserve Bank of Dallas, finally, but I feel sure that everything was finally paid; in other words, I have no record showing that any of the drafts given to the Federal Reserve Bank of Dalls were unpaid, and even these three drafts were paid.

I have been in the banking business thirteen years, in Arizona, at Willcox, Arizona, most of that time—nine or ten years of that time. During that time we have had drafts drawn on us that were sent to us by other banks. We usually paid those checks in various ways. When they came from correspondents we charged them against their account, or credited them to their account, and where they were not correspondents we remitted for

them with a draft on one of our correspondents. For the purpose of illustration, we will say the First National Bank of El Paso was our correspondent, and we got a check drawn on us by the First National Bank of Fabens, we would remit for it with a draft possibly on the First National Bank of El Paso; in other words, we would remit in some form of draft. With reference to whether that is the usual course of banking, I will say that is the thing that is done mostly; it is according to the instructions; some instructions are that we should remit to a certain bank for their credit, or remit in certain specified exchange. I don't know of an instance in our bank where we were called on to send the cash. As far as my experience has gone I will say that as a rule settlement of cash letters is always made in some form of draft,—I have heard of cases where cash was demanded. My experience as a banker is that as a rule it is drafts, although many times there is a certain specified—only a certain kind of exchange will be acceptable. I have never known of a case where a collection on a bank was sent direct to that bank with instructions for it to remit in cash.

It is hard to say what I understand is meant by the expression "final payment."

Q. For instance, they have got a pass book here, we will say, all out of town items credited subject to final payment. Now, as a banker—you have been in that business quite a while—what would you understand expression to mean?

A. Well, that is vague.

Q. Don't it mean cash, in other words?

A. Don't it mean cash?

Q. Yes, final payment—don't final payment to a bank mean cash?

A. I don't know whether it does necessarily. It might be paid in a draft which was equivalent to cash. If the draft was not paid I do not suppose that would be called final payment.

I don't remember whether we have just that wording on our pass books or not, as a rule it is on the pass books. We had something of that kind on the bank I am connected with. That means we take an item subject to final payment, and by the expression final payment it means when the course of collection finally stopped. In the ultimate end it would be cash or its equivalent, that is what it means.

The County of Cochise had a checking account with the Central Bank of Willcox. I don't know whether it had a bond protecting that account. With reference to whether I have found one, I will say it wouldn't be at the bank, I wouldn't know anything about a bond.

The County of Cochise has never filed any claim with me as Receiver for this check, for the amount of this check for $5,000.00, but in case of the checking account no claim was required, the list of balances were approved by the Court as one claim. The $24,000.00 balance is among them. That does not include this check for $5,000.00, the check has been deducted. That $5,000.00 item has not been allowed as a claim against the Willcox Bank, and no claim for it has been presented. I am not positive whether the balance in favor of the County is secured or not.—that is, not of my own knowledge.

REDIRECT EXAMINATION:

Going back to the question of custom, and not confining it alone to the custom of my own bank, I have known of an instance where the Federal Reserve Bank requested cash in exchange for cash letters or collections. That was in Bisbee, Arizona. That was handled through a

special agent the Federal Reserve Bank appointed out there.

RECROSS EXAMINATION:

I understand that in that instance the reason it was sent to the special agent was because the Bisbee bank would not remit at par. When an item was sent direct to it and it gave its draft I imagine it would deduct the charges, and I suppose for that reason the Federal Reserve Bank sent it out and presented it over the counter to save the charges.

REDIRECT EXAMINATION:

The Federal Reserve Bank was very particular to specify certain exchange that the Willcox Bank & Trust Company should remit, and our instructions were to have a rubber stamp printed which would make these drafts payable against the First National Bank account, in Dallas, and I remember we failed to put some of the stamps on and we were called down for that, very particular.

THE WITNESS: Your Honor, may I correct a statement?

THE COURT: You can correct your testimony, yes, sir, where you have made a mistake.

THE WITNESS: I think you asked me between the time of these drafts being turned down in July, and later you asked me if any other drafts had been turned down?

MR. CULWELL: Yes, sir.

THE WITNESS: Of course this last draft was.

(Continuing Redirect Examination): Of course there were many drafts on other people that were drawn and turned down, other outstanding drafts at the time they

closed. I believe those three drafts, and this last draft, were the only ones sent to the El Paso Branch of the Federal Reserve Bank that were turned down.

(Witness excused)

P. M. BUCKHALTER,

a witness for the plaintiff, having been sworn under the rule, testified as follows:

DIRECT EXAMINATION:

My name is P. M. Buckhalter. I live in Bisbee, Arizona. I am in the banking business, am Cashier of the Miners and Merchants' Bank.

Our bank has had negotiations and correspondence with the El Paso Branch of the Federal Reserve Bank with reference to remitting in response to their collection of cash letters; we have had quite a little correspondence. They wanted us to consent to par items which they would send us, but we have an old established custom of charging exchange, and we would not consent to it, and for some years they sent their items to a special agent, who presented the items at our counter and received the cash for same. They started that letter about the latter part of 1919, and it was discontinued a little less than a year ago, as I remember, and all of those instances they have carried that so far as to appoint a special agent at Bisbee and require us to pay the cash for those things right there, to their agent.

I don't know of their having done the same thing at Tucson with the Southern Arizona Bank & Trust Company.

(Counsel handed witness a letter): That is a letter from the Federal Reserve Bank of Dallas, to the Miners & Merchants Bank, and signed by R. L. Van Zandt, Governor, and is dated September 3rd, 1919.

(Counsel handed witness another letter): This is a letter from the El Paso Branch of the Federal Reserve Bank of Dallas, dated December 27th, 1919, and signed by R. R. Gilbert as Manager.

(Counsel handed witness a telegram): This is a telegram received from the El Paso Branch of the Federal Reserve Bank of Dallas, dated September 17th, 1919.

All of those are correspondence that came regularly to our bank through the mails, and telegraph.

That (indicating letter) is a letter from the El Paso Branch of the Federal Reserve Bank of Dallas, dated December 16th, 1919, addressed to Mr. Shattuck, President of our bank, signed by M. Crump, Cashier.

(Plaintiff thereupon introduced the telegram in evidence, same being marked Plf's. Ex. 20, and being in words and figures as follows):

(On Western Union Telegraph Blank).

WESTERN UNION TELEGRAM.

Received at
78 S D 88 BLUE

El Paso Texas 352P September 17 1919
(In pencil) Received
9-17-19
4:21 P.M.

MINERS AND MERCHANTS BANK
57 Bisbee Arizona

Furthering recent correspondence relative parring arrangement with your institution not optional as to placing your name on reserve par list has already been done and will begin receiving items on you in few days therefore necessary immediate arrangements be effected for mail remittances at par otherwise shall have to collect all items in cash over your counter this means Federal par facilities will be complete and universal no banks

excepted other banks now acquiescing cannot you coop-
ate likewise and avoid payments in cash answer collect
EL PASO BRANCH
411 P

(Plaintiff thereupon introduced letter dated December 27, 1919, to Mr. L. C. Shattuck, President, signed R. R. Gilbert, Manager, same being marked Plf's. Ex. 21, and being in words and figures as follows):

Directors
R. R. Gilbert, Manager
W. W. Turney
A. P. Coles
A. F. Kerr
U. S. Stewart

—

M. Crump, Cashier

—

J. H. Niendorff, Assistant
Federal Reserve Agent

EL PASO BRANCH
Federal Reserve Bank of Dallas
El Paso, Texas

December 27, 1919.
Plf's. Ex. 21.

Mr. L. C. Shattuck, President,
Miners & Merchants Bank,
Bisbee, Arizona.
Dear Mr. Shattuck:

When I visited your bank last month, I promised to forward, at an early date, a statement regarding the position of the Federal Reserve Banks in undertaking to collect all checks at par.

I am attaching hereto a copy of a letter from Hon. W. P. G. Harding, Governer of the Federal Reserve Board at Washington, discussing the questions of law and policy involved in the matter of collecting all checks at par. I trust you will read this statement very carefully, which I am sure will convince you the Federal Re-

serve Banks have no alternative but to collect checks through the Express Company or a bonded agent when the banks on which such checks are drawn do not agree to remit at par.

The Attorney General of the United States has ruled that Federal Reserve Banks are not permitted to pay an exchange charge. However, as stated previously, we are authorized to absorb the actual cost of shipping currency where such transfer is really a necessity. This same privilege is accorded non-member banks remitting at par, in that where they are short on exchange and long on currency and desire to settle for our daily cash letters in cash, they are at liberty to ship us the currency at our expense. A self-addressed stamped envelope is enclosed with each cash letter for the return remittance, in case the bank desires to settle in exchange, and with these facilities at its command, I am sure you will agree that the remitting bank need not be at any expense in settling for these items.

I should, however, be lacking in frankness did I not say to you, in connection with the foregoing, that, after having made a careful study of the

whole situation throughout the entire country, I personally believe that the day of the exchange charge is passed, and that the fight against the elimination of it is absolutely and conclusively hopeless. I believe this by reason of the fact that a large majority of the banks throughout the United States, which have operated under the new plan for two or three years, now favor it, and that the American Bankers Association as a unit would not be disposed to combat the new policy; but aside from that there is the further fact that if all the banks in the United States were in favor of abolish-

ing the par collection facilities of the Federal Reserve System, they are, as a class, in a very small minority, as it is the commercial interests of the country, to whom the banks must necessarily look for their growth and earnings, which are opposed to an exchange charge, and these latter interests, I believe you will concur with me, necessarily have a much larger influence through Congress than the proportionately small number of bankers who might be opposed to the new plan. The customer himself is, in the final analysis, the most influential factor, and knowing as he does that he has every right to expect that his check should be paid at one hundred cents on the dollar, regardless of whether he presents same in person or the item is presented to the bank through some other medium, and not that it will be discounted, as is the case where an exchange charge is made, will never approve the practice of making an exchange charge on his own checks.

Were I an interior commercial banker at this time and opposed to the policy of remittances at par, realizing as the majority surely must, that the Federal Reserve Banks have no choice nor option in the matter of collecting these checks, but must proceed therewith regardless, as the Federal Reserve Board, acceding to the urgent demands made upon it from all parts of the country to place in operation the par facilities provided by Congress in the Federal Reserve Act, has laid down a definite policy to the Federal Reserve Banks and the latter must proceed therewith, I would immediately sign up and remit at par. Then I should take some action, either individually or collectively with my fellow bankers who also opposed the plan, and follow same to conclusion through Congress, which, in my opinion, is the only possible source of relief, as Congress

Federal Reserve Bank of Dallas
Continuation Sheet. Mr. Shattuck—3.

enacted this law and the Federal Reserve Board has no authority except to carry out its provisions.

Trusting you will pardon the length of this communication, and awaiting your reply, I am

Sincerely yours,
(Signed) R. R. Gilbert
Manager.

Enc.
RRG-RS

(Plaintiff thereupon introduced in evidence letter dated December 16, 1919, to Mr. L. C. Shattuck, President, signed M. Crump, Cashier, same being marked Plf's. Ex. 22, and being in words and figures as follows):

Directors
R. R. Gilbert, Manager
W. W. Turney
A. P. Coles
A. F. Kerr
U. S. Stewart

M. Crump, Cashier

J. H. Niendorff, Assistant
Federal Reserve Agent.

EL PASO BRANCH
FEDERAL RESERVE BANK OF
DALLAS

El Paso, Texas

December 16, 1919.
Plf's. Ex. 22.

Mr. L. C. Shattuck, President,
Miners and Merchants Bank
Bisbee Arizona.

Dear Mr. Shattuck:

This will serve to introduce to you Mr. Mark P. John, Special Agent of the El Paso Branch of the Federal Reserve Bank of Dallas, whose signature, for purpose of

identification, appears on the margin hereof.

In his capacity as Special Agent of this bank, Mr. John has full authority to effect collection of any checks endorsed by this bank to his order as Special Agent.

Both Mr. John and ourselves will be very appreciative of any courtesies extended to him, and holding ourselves in readiness to serve you in turn, whenever opportunity offers, we are,

Very truly yours,
(Signed) M. Crump
Cashier.

MC:P

Specimen of Mr. John's Signature:
(Signed) Mark P. John.

(Plaintiff thereupon introduced in evidence letter dated Sep. 3, 1919, to Miners & Merchants Bank, signed R. L. Van Zandt, same being marked Plf's. Ex. 23, and being in words and figures as follows):

FEDERAL RESERVE BANK
OF DALLAS

Sep - 3 1919

Plf's. Ex. 23

Miners & Merchants Bank,
Bisbee, Arizona.
Gentlemen:

As one of the most useful agencies in promoting commerce and trade, the Federal Reserve Banks throughout the country have used every reasonable effort to extend the custom of par collections.

Of the total of 29,000 banks in the United States, all, with the exception of approximately 6,000, now appear on the par list of the Federal Reserve System. It is felt therefore, that the attitude of the small minority mentioned in declining to remit at par for items on themselves

is so unfair toward the nation's commerce and to the large number of banks which have voluntarily placed their par facilities at the disposal of the Federal Reserve System and through it at the disposal of the commercial interests of the country, to which the banks as a whole must look for their progress, growth and earnings, and so much pressure has been brought to bear upon the System to handle all items at par that the Federal Reserve Banks are now under the necessity of proceeding to effect collection through such medium as may appear most suitable other than through the ordinary course of the mails, of checks on those banks which are unwilling to remit at par. The necessary steps have already been taken with this purpose in view, and with this policy a definitely established fact the Federal Reserve Banks have no alternative other than to proceed to place same into effect. This has already been done in practically all of the other districts and there are now, in fact, a number of districts in which no banks make a charge for remitting. In the remaining districts the situation is rapidly approaching the same status.

Realizing as we do that any opposition on the part of those banks not now remitting at par, must of necessity, in any event, be only of a temporary character, it is, therefore, hoped that the banks which have not, up to the present time, signified their willingness to place their names upon the par list of the Federal Reserve System, will, upon further reflection, comply with the request of the Federal Reserve Banks to remit at par through the ordinary mail channels, rather than occasion the use of other methods.

As you are aware, there will be enclosed with each of our collection letters addressed to those banks signifying their willingness to remit at par, a stamped addressed envelope for their return remittance, and should they, from time to time, have occasion to ship us currency in

lieu of remitting us exchange in settlement of our cash letters, such shipment may be made by registered mail, insured under our policy and at our expense, all that is necessary in such instances being that the forwarding bank write us a letter in the same mail, advising that the shipment has been so made and requesting that insurance be effected under our policy, upon which the insurance become immediately effective. Under these terms, therefore, the assenting bank need be at no expense whatever in remitting for items which the Federal Reserve Bank sends them.

We trust, therefore, we may have the pleasure of your advice indicating your co-operation as herein suggested and are enclosing card agreement for execution and prompt return to us, in order that we may be governed accordingly in making our arrangements.

Very truly yours,
R. L. Van Zandt
Governor.

CROSS EXAMINATION:

At that time a good many of the non-member banks of the Federal Reserve System were insisting that they be permitted to charge exchange of these collections, and we charged exchange on all such items. We found a good many of our customers had been sending out checks before they had the money on deposit with us, they would send them to various eastern firms, possibly it would take a week or two weeks for a check to get in, and to overcome that we started an exchange charge of 25 cents a $100.00, but we would issue them our drafts on our eastern correspondents without a charge. That is the reason why we started that exchange charge. With some few exceptions we insisted, when the Federal Reserve Bank sent us an item, that we were entitled to

charge exchange in remitting them, and the Federal Reserve Bank refused to pay that exchange. It did not refuse to take our drafts at that time; there never was a time that the Federal Reserve Bank would refuse to take our drafts, but they wanted a draft from us for the amount called for without deduction for exchange; they refused to take them for the last year though for less than the amount called for. I think it is true that the only reason they put a man out there to present checks at our counter was because we were refusing to remit except by taking out exchange. When these checks were presented to us over the counter we could not charge exchange. I presume their reason for having a man present them over the counter was to avoid payment of exchange, although it cost them more to collect it. We took one view of whether we were entitled to exchange, and the Federal Reserve Bank took another view.

With reference to whether I know whether the Attorney General of the United States had ruled that Federal Reserve Banks could not pay exchange lawfully, I will say it was pointed out to me, I think it is embodied in the law. That was the position of the Federal Reserve Bank at least, that they could not pay exchange, it didn't matter how much it cost them to collect those items through a special agent. So the reason that we paid cash was because they would not pay the exchange. The Federal Reserve Bank never did raise any question about taking our drafts as such, the controversy was over taking our drafts from which we had deducted exchange.

REDIRECT EXAMINATION:

It is a fact, independent of the reason for it, that the Federal Reserve Bank has for over three years maintained a special agent and collected our checks in cash. That relationship terminated recently by them taking us off

the par list.

(Witness excused)

PLAINTIFF RESTED.

* * *

C. W. BICKLEY,

a witness for the defendant, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION:

My name is C. W. Bickley. I live at Fabens. I am Vice President and Cashier of the First National Bank at Fabens. I have had fifteen years experience in the banking business. I have been connected with the First National Bank at El Paso, and the Elgin National Bank at Elgin, and Merchants & Farmers State Bank at Elgin.

I am familiar with the method of collecting existing between banks. In settling for cash letters we always remit in drafts on our correspondents in reserve centers. That is a universal custom.

I have never known of a drawee bank to whom an item has been directly sent being called upon by the remitter to send cash. When that cash letter comes into the bank it is at the payee's option as to the method of remittance; if he wanted to send cash he can, and if he wanted to send a draft he can.

By "items on outside points accepted subject to final payment" I understand that items accepted for deposit on outside points are accepted subject to final payment. If remitted in draft when that draft is finally paid by the drawee bank it is final payment.

CROSS EXAMINATION:

Our bank is a National Bank, and is a member of the

Federal Reserve. In the Federal Reserve Bank's cash letters to us they require us to remit in exchange payable in El Paso, or exchange against our reserve. The law requires us to keep a certain reserve in the Federal Reserve Bank, and they penalize us if we do not keep a certain reserve, they fine us. In answer to their cash letters they want checks payable in El Paso that are immediately convertible. In that instance it is their option what method of payment may be made, though on checks drawn directly on me, on collections it is not, it is my option. Say we received a check drawn on our bank, sent in to their bank for collection, I am requested by them to remit in that sort of check, it is printed on their letterheads remittances should be payable in El Paso; I have never had any trouble with them, I have always remitted on El Paso.

If John Smith draws his check on our bank, payable we will say to the Border National Bank, the Border National Bank turns it in to the Federal Reserve Bank for collection, the Federal Reserve Bank transmits a cash letter to us with that item, the option is with me what medium I will pay that in; I can either remit them on the First National Bank of El Paso, or on themselves.

Q Exactly so. That far it is with you, but it is with them as to whether or not they will take it, and it is their rules that govern as to what they will take, and their rules are they will take a check either on your reserve account or El Paso exchange,—isn't that correct?

A I have never had any occasion to be censured from them by remitting outside.

If I had a check deposited with my bank for collection on a bank which I had reasonable grounds to suppose was in imminent danger of insolvency, I would accept that bank's check in payment of it if the customer was solvent and I could get my money back if the check came back, I would take it. If the customer was not solvent,

I would handle the check for collection, I couldn't give the customer credit for it, I would handle it for collection.

The Federal Reserve Bank here has never demanded cash of us in payment of checks, and they have never sent a messenger down to our bank and demanded cash in payment of checks.

(Witness excused)

W. C. WEISS,

a witness for the defendant, having been sworn under the rule, testified as follows:

DIRECT EXAMINATION:

My name is W. C. Weiss. I was formerly manager of the El Paso Branch of the Federal Reserve Bank of Dallas, and I held that place about four years. I was holding that position in the latter part of 1920.

I am familiar with the method of conducting business at the Federal Reserve Bank. As manager for that bank I was in touch with the general banking situation throughout the entire Eleventh Federal Reserve District, or the western part of it. My duties as Manager there were to supervise all the functions of the Branch.

I knew the Central Bank of Willcox at the time I was with the Federal Reserve Bank. I had had occasion to do business with or through the Central Bank of Willcox, to the extent of sending of cash items to them as a non-member bank. It was our custom to send such items direct to that bank, and we had been doing that ever since I came to the Branch.

In December of 1920 I did not have information which led me to believe that the Central Bank of Willcox was in an unsettled condition.

I had something to do with sending out the cash let-

ters from the Federal Reserve Bank in a supervisory capacity.

At the time I did not know anything about the particular transaction out of which this suit arises; I did not handle it personally. I couldn't give you the name of the person who did handle it. Our Transit Department handled it in the usual course of business.

If the El Paso Branch of the Federal Reserve Bank of Dallas had had any kind of information that might lead it to believe this bank was badly extended even this collection would not have been sent to the Central Bank of Willcox direct; following our usual custom we would have protected ourselves. This check in question was sent to that bank direct because we had no knowledge there was anything wrong; we had been sending checks direct to them. We had not had any trouble with them previously for some time, but we had had trouble with them some time previously, as I recall they had a couple of their drafts that went to protest. That matter was taken up with them at the time, as to the reason for it and so on. We did not make any kind of investigation as to that bank at that time, because, as I recall, the transactions were satisfactorily settled.

After the incident of the protest of the drafts we continued to do business with the Central Bank of Willcox, and their settlements were entirely satisfactory up to the time of this one in question.

It is my understanding of the regulations that the Federal Reserve Bank may send items direct to the bank on which the item is drawn, and we frequently did that. I have never known of an instance when an item was sent to a bank that direction was given that it should remit in cash. The usual method of settlement of cash letters is remittance by draft. With reference to whether or not in my experience that custom is universal, I will say I have never known it to be otherwise.

Taking this particular transaction where the First National Bank of Douglas sends to the Federal Reserve Bank Branch here a check drawn on the Central Bank of Willcox, and Willcox settles by giving its draft on Phoenix, there is nothing out of the ordinary at all about that method of handling, it is customary. It did not occur to us down at the bank when it occurred that was unusual or out of the ordinary.

The draft on Phoenix, it appears, that was given by Willcox was sent by the Branch here to the Branch in Los Angeles. The reason that was done is because Willcox is located in the district served by the El Paso Branch, whereas Phoenix is located in the district served by the Los Angeles Branch, and in the usual course of procedure, and for the general benefits accruing to all, it would naturally be sent to the Los Angeles Branch for presentation to the bank of their district, which is Phoenix; in other words, Phoenix was in that district, and Willcox was in this district. That is the usual way of handling those items.

If we have an item drawn on a bank in another Federal Reserve District it is usual to send that item to the nearest Branch of the Federal Reserve Bank in that district, or to the Federal Reserve Bank itself; that is the usual way of handling it.

At the time of this transaction we did not have any knowledge that the Central Bank of Phoenix was in bad condition.

There were some non-member banks that were refusing to remit at par, and along about 1920 and 1919 there was a controversy between non-member banks and the Federal Reserve Bank as to the right to charge exchange by the non-member banks. We were making a campaign at that time to induce these non-member banks to remit at par, and some of the non-member banks were objecting to it. I recall the controversy we had with the

Miners & Merchants Bank out at Bisbee, Arizona. I am familiar with that situation there, relative to that bank. Before I had come to the Branch they had established what is known as the par campaign, such as you mentioned, and by the time I came most of the banks over this district, with the exception of the two banks at Bisbee and one at Lowell, one of which is the Miners Bank, had agreed to remit at par, but these banks had consistently refused to remit at par, and it finally became necessary, following our our practice, and those banks being the only ones refusing to remit at par, for us to establish an agency at Bisbee for the purpose of collecting checks drawn on the two banks at Bisbee and the one at Lowell, and our checks, all cash items, were sent direct to this agent and he in turn collected and remitted for them.

The Federal Reserve Bank never indicated to the Miners Bank that it would not take their exchange; on the contrary, we endeavored every way possible to get them to send us their exchange in lieu of the items sent to them, we absolutely wanted them to do it. We were simply refusing to pay exchange to them, that was all. Had they been willing to remit at par there would have been no controversy whatever. Whether or not they had been willing to remit at par we would have accepted their exchange sent to us in settlement of our cash letters. There was no question of solvency or insolvency involved in that controversy. We did not put our agent out there to collect those items over the counter because the question of the solvency of the bank was involved.

We were advised that it would be illegal for the Federal Reserve Bank to pay exchange on these items. When a remittance is made in cash to the Federal Reserve Bank it pays all transportation charges.

(Counsel handed witness a document): That is the

regulations of the Federal Reserve Board; it is what is known as Regulation J, Series of 1920.

(Defendant thereupon introduced in evidence Paragraph 8, of Regulation J, Series of 1920, identified by the witness, said Regulation J, Series of 1920 being marked Dft's Ex. 3, and the portion introduced, being Paragraph 8 thereof, is in words and figures as follows):

"(8) In handling items for member and nonmember clearing banks, a Federal Reserve Bank will act as agent only. The Board will require that each member and nonmember clearing bank authority its Federal Reserve Bank to send checks for collection to banks on which checks are drawn, and, except for negligence, such Federal Reserve Bank will assume no liability. Any further requirements that the Board may deem necessary will be set forth by the Federal Reserve Banks in their letters of instruction to their member and nonmember clearing banks. Each Federal Reserve Bank will also promulgate rules and regulations governing the details of its operations as a clearing house, such rules and regulations to be binding upon all member and nonmember banks which are clearing through the Federal Reserve Bank." (Deft's Ex. 3).

I understand the expression "final payment" to mean cash or its definite or specifically admitted equivalent. I would say that definition of final payment is the way it is generally understood in the banking world.

The Federal Reserve Bank does not dictate to a payee bank how it shall remit. The payee bank has the option of remitting in cash or satisfactory exchange.

The Federal Reserve Bank advises remitting banks that any remittances, to be available items, they must send it of a certain kind; assuming it to be a National Bank it must be a draft on their reserve here in the Fed-

eral Reserve Bank on a bank located at clearing centers. The purpose of that is that the remittance may be immediately available to the remitting bank. If a bank in remitting to the Federal Reserve Bank for an item sent the Federal Reserve Bank a draft on some bank out of the state we would not refuse to take it, but we would refuse to take it as payment, and it would not be available; in other words, we would receive it subject to final payment, but we would not give him immediate credit. If they wanted immediate credit it would have to have it on a reserve center or on the Federal Reserve Bank.

CROSS EXAMINATION:

I don't think that the Federal Reserve Bank makes certain specific regulations governing its Transit Department applicable to member banks, and requires of them that they remit in answer to cash letters in specified forms of exchange; if it would constitute an acceptable and immediate credit probably they would naturally expect under their regulations that a draft be remitted either against their reserve account or payable at the clearing center, or cash, but otherwise I do not recall. The Federal Reserve Bank does allow them to remit cash, but I do not recall where we specify any particular form of exchange. Those three methods that I just enumerated, remit in cash, or remit by checks on their reserve with us, or remit by exchange on the reserve Center, are the things that we accept as a credit for that bank to its reserve account, or as payment for cash items which we hold and debit. In other words, the purpose of that is not only to expedite matters but also to assure us that the payment they give us for cash items is in fact payment, and until they do give us some form of remittance that comes within our regulations, as I

told Mr. Culwell a while ago, we only accept items subject to final payment.

It is not a fact we require non-member banks to make particular arrangements or specific arrangements about what sort of exchange we will accept from them, we have never insisted upon them remitting in a definite form of exchange. We have suggested that if convenient that it might be well for them to open up certain banking relations, but it has not been compulsory.

I was connected with the Federal Reserve Bank at the time of its relations with the Willcox Bank & Trust Company. I do not recall that we ever compelled the Willcox Bank & Trust Company to remit to us in El Paso Exchange or First National Bank exchange chargeable immediately against the First National Bank's account with the Reserve Bank. I believe, if I recall correctly, that at one time they did business with the First National Bank of El Paso and had an account here, but I was not instrumental in forcing that account, and I do not recall that the Federal Reserve Bank required that the Willcox Bank & Trust Company remit what was in effect equal to cash.

Of course, we would accept cash if banks sent it. I guess sometimes probably they do send cash, I do not recall. It is not customary, because as a general rule they need the cash themselves. 99 per cent of all of this business is done by checks, that is a matter of every day business convenience, but I would not say specifically that 1 per cent of the business was done in cash; once in a great while some bank having a surplus on hand would send it in for credit.

I do not recall anything about requiring cash of the Arizona Bank & Trust Company and having it collected by the express agent out at Tucson; that was before I came with the Branch, and I didn't know of it.

Referring to this instance with regard to the Miners

& Merchants Bank requiring par checks, and in which we appointed a special agent out there to collect the money from them. I will say when it was first started the Federal Reserve Bank had some little trouble with non-member banks over the country over that question. I couldn't say definitely whether there was some litigation; I don't believe we had any litigation in our district. At many different places over the country they established this practice of collecting direct, through an agent, there were several agencies at the time.

The First National Bank of Douglas is a member of the Federal Reserve Bank, and our requirements of it, along with other members, are they it must remit either in cash, by check on its reserve, or by check on a bank here at the reserve center, and collections which we had from it on other member banks of this reserve district would have been collected under one of those three methods, or cash.

With reference to why the Federal Reserve makes a distinction between non-member banks and member banks more favorable and more lenient to the non-member bank, I will say of course I can't say what the framers of the Act had in mind, but to me it is very apparent that it would be impossible to force a non-member bank to handle itself so that it could make its funds immediately available to a Federal Reserve Bank, and if we insisted at El Paso, Dallas or Houston that all non-member banks carry a balance in those clearing centers it would be unfair to every other part of the country, because it would be restricting them to opening up accounts where perhaps they would not care to open up an account; whereas with member banks it is compelled by law to maintain its reserve with the Federal Reserve Bank, consequently it has the opinion of sending in its checks to the Federal Reserve Bank for clearing all over the country, and at the expiration of the time scheduled

building up its balances there so it has a balance at all times on which to draw in payment of these cash items.

I don't know that they use a higher degree of care against member banks than against non-member banks, I believe it would be the other way on, if we happened to force a non-member bank to open up an account in El Paso which probably would not be to its advantage to do.

I do not recall that we had any opinion from the Attorney General as to what obligations under the law the Federal Reserve Bank assumed in undertaking to collect a check. They were not advised, to my personal knowledge, that the law charged them with the duty of collecting a check in cash or something of equivalent value.

When we received this collection from the First National Bank of Douglas we sent it out direct to the Central Bank of Willcox.

I was the Manager of the Federal Reserve Bank Branch at El Paso in 1920. We had not experienced much trouble in Arizona and New Mexico during that time with reference to the failure of banks,—there had been a few failures. As I said, there were a couple of drafts of the Central Bank of Willcox that we had protested,—I do not recall the amounts nor do I not recall exactly the dates of them, I have never refreshed my memory since then.

If we had had a collection on a bank, a non-member bank that we believed probably to be in failing circumstances, we would have attempted to protest ourselves and our endorser to the best advantage possible, either by attempting to collect by an agent, or refusing to have presented it at all, just returned the item. It is practicable, as we proved in the Miners & Merchants Bank case, to collect through an agent, and we could in some instances, if necessary, send a collection through the express com-

pany, or it could possibly have been sent to another bank in the same town.

EXAMINATION BY THE COURT:

On collection on member banks we required a remittance by draft on that bank's reserve with the Federal Reserve Bank, or on a bank where the Federal Reserve Bank is situated. A non-member bank could send us a draft on any bank in any part of the country, but a member bank could not. Taking this case, it would not be unusual to accept a draft on another non-member bank in another Federal Reserve District. I do not know whether the Bank at Phoenix was a member bank or not. It might be possible to kite these drafts all around the country, say send one to one of the Phoenix banks, and then when it was presented to the Phoenix bank they could send us a draft over on a bank in Nevada, and so on indefinitely, would never be a final payment of it under that practical,—of course, the Los Angeles Branch would at that time have accepted it and put it in line for payment, and I presume a series of kiting of that character might be successfully worked, but it would be rather difficult as to whether it could be carried on indefinitely or not, because ultimately their kiting would catch them, they would get caught up with, and it would be a question as to who would get caught, strike some bank that would fail and then somebody would get caught. That happened in this particular case. I think this Phoenix bank failed almost concurrently with the Central Bank of Willcox, some ninety days after this transaction.

If we had required the same of non-member banks as we did of member banks we would have had a draft on a bank here in El Paso, or cash, which would work material hardship on a non-member bank.

RECROSS EXAMINATION:

(Counsel for plaintiff handed witness a paper): That is one of our cash letters from the Federal Reserve Bank, and that is one of the circulars that was issued by the Federal Reserve Bank.

Q Now, you said just now that your bank did not attempt to dictate how these remittances would be made. This circular says "Upon receipt of a cash letter, remittance must be made *** and dispatched by next mail * * * Such remittance may be made in cash * * , or by draft the proceeds of which may be obtained by us on the same day of its receipt, as described below."

"(a) Drafts drawn by a member bank against funds in its reserve account.

"(b) Drafts drawn on any bank in that city from which our cash letter is forwarded.

"(c) Drafts stamped and made payable through the Reserve City Clearing House.

"(d) Cash (When prepared and forwarded in accordance with method outlined in our latest circular pertaining to cash shipments.)

A That has reference to the manner in which cash shipments shall be prepared, and how they shall be forwarded, the manner in which currency is put up.

Provision is made in our regulations for the shipment of cash.

(Plaintiff thereupon offered in evidence the two documents identified by the witness, the first being Cash Letter, which was marked Plfs Ex. 24, and the second being a circular, which was marked Plfs Ex. 25, and same being in words and figures as follows):

EL PASO BRANCH
FEDERAL RESERVE BANK OF DALLAS

El Paso, Texas

CASH LETTER Dec 30 1921

To Date

3

FIRST NATIONAL BANK
DOUGLAS
ARIZONA

GENTLEMEN:

We enclose herewith the following described items for collection and remittance in immediately available funds (draft on your reserve account or other El Paso exchange, exchange payable through the Reserve City Clearing House, or shipmenf of cash).

All funds collected shall remain the property of the El Paso Branch, Federal Reserve Bank of Dallas, until the proceeds of the remittance are received; and the acceptance by the El Paso Branch, Federal Reserve Bank of Dallas, of any draft for the same, or any portion thereof, is subject to final payment.

Protest all items over $10.00 except those bearing this stamp N. P. 88-1 or similar authority of a preceding bank endorser. Telegraph non-payment of items $500.00 or over, giving name of bank endorsing to this bank.

			.00
	3293.22s	57	23.80
77	25.00	57	10.00
77	18.25	60	6.00
77	9.35	60	2.00
77	14.80	60	10.00
71	2.00	60	46.20
71	100.00	60	4.00
71	50.00	60	300.00

(In red)

11	16	70.59	55	41.74
	71	35.00	55	8.00
	71	1.52	55	30.63
	71	3.50	55	37.50
	71	19.04	55	6.50
	71	8.90	55	7.75
	71	46.61	55	17.60
			55	15.00
		3697.78s	55	5.00
			55	4.80
			55	12.05
			55	25.35
			55	7.00
		Plfs ex. 24	55	2.70
			55	16.00
			55	3.00
			55	43.20
			55	28.15
			55	138.28
			55	76.56
			55	135.00
			55	16.80
			58	20.00
			58	40.00
			58	43.00
			63	54.68
			62	10.00
			62	104.10
			62	20.00
			62	78.00
			62	2.00
			62	95.00
			62	8.34
			62	186 00
			59	12.88
			65	29.76

	65	960.15
		2,744.64
		2,744.64s
	70	5.00
	70	3.15
	70	5.00
	70	10.54
	70	21.00
(in ink) 3697.78		
79.83		
3617.95		
	69	5.00
	66	4.50
	67	3.00
	67	4.00
	67	12.00
	68	6.50
Peoples Grocery Co	68	79.83
Ins fds-	68	45.41
	73	25.00
	74	12.00
	6	20.00
	76	30.00
No. 144821	77	252.35
12-31-21.	77	4.30

Plf's Ex 25.

IMPORTANT CHANGE IN METHOD SETTLING FOR CASH LETTERS EFFECTIVE IMMEDIATELY

The following is an excerpt from our Circular No. 3, Series of 1921—Transit Operations. Please read the full circular carefully and preserve for reference.

OUTGOING CASH LETTERS

Out going cash letters from the Federal Reserve Bank of Dallas and its branch will be forwarded for collection and REMITTANCE.

Upon receipt of a cash letter, remittances must be made for all items good on the drawee bank's books and dispatched by next mail in the self-addressed, stamped envelope enclosed with each cash letter, together with all dishonored items. Such remittance may be made in cash as hereinafter provided, or by draft the proceeds of which may be obtained by us on the same day of its receipt, as described below. All return items should be plainly marked showing reason for non-payment. In order to avoid liability the bank returning checks should carefully follow protest and telegraphic instructions printed on the cash letter accompanying the checks.

Dishonored items will not be accepted as partial payment of any letter other than that in which the items were included.

The stub at the bottom of the cash letter must always be returned with the remittance for purpose of identification. In case an error is found in our cash letter, do not return all items but adjust your remittance and describe such adjustments fully in an accompanying letter in order that proper correction may be made in our office.

Immediately available funds consist of:

(a) Drafts drawn by a member bank against funds in its reserve account.

(b) Drafts drawn on any bank in that city from which our cash letter is fowarded.

(c) Drafts stamped and made payable through the Reserve City Clearing House.

(d) Cash (When prepared and forwarded in accordance with method outlined in our latest circular pertaining the cash shipments.)

DO NOT SEND ANYTHING OTHER THAN THE ABOVE IN PAYMENT OF OUR CASH LETTERS.

*Note: Member banks in the cities of Fort Worth, Waco, San Antonio, Galveston, El Paso, Houston and Dallas have facilities for making the drafts of correspondent banks drawn against them available for immediate credit at the Federal Reserve Bank or Branches when such drafts are stamped "payable through Reserve City Clearing House."

REDIRECT EXAMINATION:

We do accept drafts drawn by member banks on Clearing House Centers; in other words, it is not confined to the towns in which the Federal Reserve Bank is located.

A Reserve City Clearing House constitues a number of cities located over the district which, by agreement, automatically clear on one another by intermediate credit before presentation of the item to it for clearing, it is accepted, it is cleared by telegraph daily, so that the drafts drawn on a Reserve City Center, even though coming to El Paso, might be subject to immediate credit. Fort Worth is in the Reserve City Clearing House, and if the First National Bank of Douglas had sent us a draft on Forth Worth we would give them immediate credit for that—in other words, we would accept that.

RE-EXAMINATION BY THE COURT:

I don't know whether Phoenix is such a center or not; that belongs in the California district and I couldn't say.

This draft was not drawn on a Reserve City Clearing Center so far as our district was concerned.

(Witness excused)

LYNN P. TALLEY,

a witness for the defendant, having been sworn under the rule, testified as follows:

DIRECT EXAMINATION:

My name is Lynn P. Talley. My official connection with the Federal Reserve Bank of Dallas is Chairman of the Board and Federal Reserve Agent. I have been connected with the Federal Reserve Bank of Dallas since 1915, with the exception of a period between July 1921, and March, 1923. I am familiar with the Federal Reserve Bank of Dallas' method of doing business.

Prior to my connection with the Federal Reserve Bank of Dallas I was in the banking business, altogether I think I have been in the banking business approximately twenty-two years,—since 1902.

I had something to do with the preparation of this Regulation J. I was a member of a committee of the conference of Governors that drafted that, made the draft of Regulations J. for the Federal Reserve Board, consisting of a committee of transit experts. That regulation affects all Federal Reserve Banks in the whole system.

I did not have anything to do with the handling of the item that is made the basis of this suit. I am familiar with the method of handling those kind of items. It is usual and customary for the Federal Reserve Bank to send an item direct to the bank on which it is drawn. In doing that it is not usual for the Federal Reserve Bank

to call on the payee bank to remit in cash; I do not know of any instances wherein that was done.

During my experience, when I was in the commercial banking business, it was not usual or customary for a payee bank to whom an item had been sent direct to be called upon to pay in cash.

The usual method of settlement of cash letters is for the remitting bank to remit by draft.

The transit business of the Federal Reserve Bank of Dallas runs from $15,000,000.00 to $18,000,000.00 a day, aggregate total of checks sent out to banks in the district and outside of the district for collection. I should say the Federal Reserve Bank of Dallas does from 60 to 75 per cent of the collecting business of the district. That is a little difficult to estimate, by reason of the fact that perhaps 90 per cent of the checks which are let aloose and float in the district in the settlement of transactions evenually find their way into the Federal Reserve Bank, but they don't come there directly, necessarily, from the banks who are originally involved in the transactions, sometimes pass through several banks before they get there.

Taking the entire Federal Reserve system of the United States, the entire twelve districts, I should say around 80 per cent of the collection business is done by the Federal Reserve Banks, does almost all of it, except in the collection of those checks which are passed directly through local clearing houses. There are items that are handled directly through banks that don't go through Federal Reserve Banks.

The Federal Reserve Bank does not make any charge against its banks for this service. It is a gratuitous service. In undertaking to collect an item for the First National Bank of Douglas we do it for nothing.

If the Federal Reserve Bank should adopt a rule that remittance for its cash letters must be in cash it

would have a very detrimental effect on business; it would be not only impracticable but would be economically impossible; I should say it would require remittance every day of say an average of $15,000,000.00 in cash directly to the Federal Reserve Bank, and during the time that money is in transit it is out of circulation, and it is not counted as part of any bank's reserve either. What that would amount to for the entire Federal Reserve System daily could only be gauged by the figures representing the deferred credits in the Federal Reserve System, as shown by the combined weekly statements of the Federal Reserve Banks, which is something between $800,000,000.00 and $1,000,000,000.00; as shown on that statement; of course, it is the amount sent out to all of the banks, and the average time of collection,—that all finds its way into the one account.

I would say it would not be practicable for the Federal Reserve Bank to require the settlement of its cash letters by cash.

EXAMINATION BY THE COURT:

Supposing we have an item for collection on a bank we do not know anything about, a non-member bank, in a remote part of the country, and supposing we do know something about it that was unfavorable, I do not see how the sending bank would be any better off by sending a check direct to a bank in which it didn't have confidence and exact a payment in cash, because it would have no assurance the bank would even remit cash on it. If we did not think it prudent, from the information we had about that bank, to send it to the bank direct then we would adopt some other means of collection, and if we have that knowledge we think we are charged to that extent of exercising diligence in sending it direct, and if we had knowledge or supposed it would be

insufficient to send an item direct to a bank on which it was drawn we would make some other arrangements for collecting that item, and if no other arrangement was possible we would return the item. Unusual instances now and then, adopting a different method from the usual, would not be such an obstacle to business if we had a universal rule on that point. I was trying to refrain from giving a dissertation on the subject of collections. The system sought direct transactions, but nothwithstanding the fact it would be impracticable and altogether impossible to require in every instance remittance of cash; it is just by the same rule necessary to give remitting banks the option to remit in cash if it so desires, because it affects the trade balance, running against a locality, would pool the cash of that locality, and we would have to give it up to use that cash for the payments of its trade balances.

DIRECT EXAMINATION (RESUMED).

By that I mean it is the option of the payee bank as to how it shall remit, remit either in cash or by draft.

If the First National Bank of Douglas, in settlement of a cash letter, sent to the Federal Reserve Bank here a draft drawn on Fort Worth it would be accepted here.

There is not a very great distinction between the requirements of non-member banks and member banks as to the character of remittances. The evolution and the eventuality of the collection sysem must be taken into consideration. Understand that a member bank has daily transactions with the Federal Reserve Bank, which are flowing back and forth, shipping currency to it, receiving currency from it, sending items to the Federal Reserve Bank for collection, and the Federal Reserve Banks are sending items directly to the member banks for collection; the Federal Reserve Bank has re-ship-

ments for certain member banks daily—not any particular member bank daily, understand, but different member banks daily; and member banks are ordering transfers by wire and by mail from other centers into the Federal Reserve Bank for their credit, and are likewise ordering transfers out of the Federal Reserve Bank to other centers for their credit; while the only contact that the Federal Reserve Bank has with a non-member bank is in the collection of checks on the non-member bank. Member banks receive a great many other services at the hands of the Federal Reserve Bank that non-member banks do not enjoy, although a non-member bank has the privilege, if it so desires, of establishing a clearing account with the Federal Reserve Bank, but there are no transactions between the non-member bank and the Federal Reserve Bank that would necessarily induce or suggest to the non-member bank that it would do certain things, in reference to where it should carry its account, and what character to make its remittance solely for the purpose of providing the Federal Reserve Bank with exchange that would be immediately available to the Federal Reserve Bank, and thereby cut down the time of transit. The non-member bank is not concerned about that, whereas the member bank is.

I am familiar with the method of handling this particular transaction in this case. I would not say it was unusual or out of the ordinary or suspicious when this item reached the Willcox bank for it to send its draft on Phoenix. Having reference to the ordinary and customary method of handling when the Branch bank here got the Willcox draft on Phoenix that item would be handled by sending it to the Federal Reserve Bank of San Francisco, in whose district Phoenix was located, or to the nearest Branch of the Federal Reserve Bank of San Francisco. That is part of the collection scheme of the Federal Reserve Banks, that items are sent—

items on other districts are sent in bulk to the Federal Reserve Bank of the other district for distribution throughout their district.

THE COURT: Why is that rule applied to non-member banks?

THE WITNESS: Not to non-member banks.

THE COURT: I understand this Phoenix bank was a non-member bank.

THE WITNESS. Yes, that is true.

THE COURT: And Phoenix is much nearer to El Paso than it is to San Francisco.

THE WITNESS: Your Honor, that is just exactly what I was trying to explain, that all of the checks, whether they be drawn on non-member banks, or regardless of by whom they are drawn, are sent to the Branch of the Federal Reserve Bank receiving such items, or by the Federal Reserve Bank receiving such items, direct to the Federal Reserve Bank of the other district. It is not specifically applied to collections on non-member banks. If a member bank in the Eleventh Federal Reserve District at that time—now, mind you, at that time—had sent the El Paso Branch a check on we will say the First National Bank of Sacramento, that check would have been sent to the Federal Reserve Bank in San Francisco, there is no differentation between the items originating either on or by a member bank.

Supposing when the Los Angeles Branch sent that item out to Phoenix it had been paid, credit would have been given for it as soon as the remittance got back and was finally paid to the Los Angeles Branch, without doubling the time betwen Los Angeles and El Paso; it didn't have to get back to El Paso, we gave them credit

immediately when when it got to Los Angeles, and then Los Angeles settled through gold settlement fund which is cleared up by wire each day. That is the reason why it is desirable to send it through the Federal Reserve Bank instead of direct to the non-member bank, we get credit in half the transit time. If we had sent it direct to Phoenix there wouldn't have been credit given until we actually got the cash back in El Paso, we would have to await the remitttance of the Phonix bank.

If you would desire me to do so, I will say that the agreement between Federal Reserve Banks with reference to collecting inter-district items is that the Federal Reserve Banks have an understanding that they will not send items which are drawn on points in another district direct to points in those districts without permission of the Federal Reserve Bank of that district.

A gold settlement fund is the gold settlement, and the gold settlement is the means of clearing up the balances, either credit or debit balances, that are created by tranactions between the Federal Reserve Banks. That gold settlement fund is operated in Washington by the Federal Reserve Board, and the balances in the gold settlement fund are either gold coin or gold certificates deposited with the Treasury of the United States for credit of the Federal Reserve Board, then the Federal Reserve Board maintains a separate record on its books as to what Federal Reserve Bank the credit balances belong to.

I may say that the interrogatories here apply to questions of principle, and Regulation J, Federal Reserve Board governs matters of principle, has nothing to do with specific transactions.

In banking final payment means ultimate payment, or it means the receipt of actual cash in the various steps of collection, or it means acceptance of a credit in another bank by the holder of a draft.

I was somewhat generally familiar with the controversy that the Federal Reserve Bank had with the Miners & Merchants Bank at Bisbee. That controversy grew out of their failure and refusal to remit at par. There was never any question whatever as to taking drafts of the bank involved at all; we preferred to have a draft against it, it was obviously much less expensive if we had a draft to El Paso than to mail money, we had to ship currency or coin and pay charges on it.

Practically the same situation existed relative to that Southern Arizona Bank & Trust Company.

CROSS EXAMINATION:

We have a regulation allowing us to send a check direct to a bank on which it is drawn. That regulation, as well as I remember, was promulgated about the early part of 1916; prior to that time the Federal Reserve Board had never ruled conclusively upon the question of the Federal Reserve Banks or Boards to act as a clearing house for the members, and we had what we call a voluntary collection system. We did begin the system of a clearing house for the members, and we specified that regulations for it to express the principle of the transactions involving the clearing of checks. The purpose of allowing the checks to be sent direct to banks upon which they were drawn was so that checks might be collected on towns where there was only one bank and no other place, no other way to collect it. And it recognized that there might be instances of liability in sending it direct to the bank and it was passed for the purpose of relieving us of that liability, and therefore they made the contract with each member bnka before they would handle items for that particular bank, or stated in the circular that the sending of items to the Federal Reserve Bank by a member bank it would

recognize that principle expressed, recognize our right to send it direct to the drawee bank.

With reference to whether we have certain regulations with reference to items sent by us to member banks that they must remit either in cash or by a check on their reserve account with us, or by a check on the city of the Reserve Bank sending the item, or by check on this clearing house association, I will say I am not sure but I think that circular says they may remit in either one of those. The purpose of those regulations is to assure the Federal Reserve Bank of two features, one is expedition and the other safety. You are a little wrong about the Federal Reserve Bank not giving them credit for this item until we know it is the same as cash, until we have in fact gotten final payment: we give them credit even though we receive a draft in payment of items sent to a bank, and those items have been received from some other bank, we still give the credit on the estimated collection time, but give it subject to final payment of those items; but if we have it in cash of course we actually give credit, if we have it in a check on their reserve credit with us that is actually credit right now; if we have it in a check on the reserve account we have that information immediately at our hands to find out whether the deferred availability time is very short, some instances almost immediately.

Q You do those things to assure protection to the Federal Reserve Bank on their transmissions of items to you. What do you do recognizing your obligation to collect in safety the checks which they send you for collection?

A We are guided by experience with banks on which we send checks and on which we collect, if remittances are prompt.

Taking the particular instance we have in this case,

where the First National Bank of Douglas sent to the Federal Reserve Bank a check drawn by Cochise County, payable to the city of Douglas, on the Central Bank of Willcox, we have a provision by which we could protect them against the failure of that bank while that check is in transit; there is no express provisions in the circular that I recall, but the provision grows out of our experience in collecting checks. If we are sending a check to a non-member bank that is notoriously negligent in making prompt remittances we remove the name of that bank from the par list, and when we remove the name of that bank from the par list we do not get any more checks on it; in other words, our method of protecting the member bank who send in items for collection is to refuse to collect it for them, to take it off the par list, and the member bank can take notice of our disinclination to handle the checks and will follow the same course. This is all discussion of the principle.

Q The question is then whether it does not work out according to your regulations, that the entire risk of the collection of items is on the member bank and not on the Federal Reserve Bank?

A Up to the point that we discover through our experience that we are incurring a risk for that member bank and ourselves in undertaking to collect those checks, whereupon we either remove the name of the bank from the par list and do not handle checks, which automatically puts that member bank on notice that it is an undesirable risk and enables to provide other means of collecting checks or decline in turn to handle them themselves. When that occurs, if you want the full development of this thought you bring out, when that occurs and we take the name of the non-member bank off of the par list then the overture is more generally than otherwise by the non-

member bank not to do that, but to continue to handle its checks.

It is possible in the exceptional cases to arrange for collection of a given item or items through special agents at a given point, but we are not required to do it at the present time. I would assume when the First National Bank of Douglas sent this item in that the Central Bank of Willcox was still on the par list, but I couldn't answer that of my own knowledge. If the First National Bank of Douglas was a member of the Federal Reserve Bank I would say that the notice of the First National Bank of Douglas was that the Central Bank of Willcox was a member, in good standing, of our par list. It would have been very confusing, in view of their contract with the First National Bank of Douglas, to consider it neccessary to have collected this check in question either through an agent or by requiring the transmission of cash, or by transmission of one of these approved methods of settlement. With reference to whether we could have sent it for collection to the other bank in Willcox, I will say that depends; probably the other bank in Willcox had advised the El Paso Branch it would receive only its own items and not items on the other bank, that frequently occurs that they refuse collections on the ground they don't care to collect checks of the customers of the other bank in the town without any remuneration, buf are willing to accommodate their own customers by remitting with checks at par; that frequently occurs.

REDIRECT EXAMINATION

Without regard to what the draft or check is that we get in settlement of an item, unless it is absolutely on us, we never accept any of those things except subject to final payment, it is always done that way.

I was one of the authors of this regulation J. As well as I remember I approved Circular No. 3.

This regulation J was about the Federal Reserve Board, and it relates to collection of money, checks, drafts, and so on. It was deemed advisable that there ought to be some concerted method used and adopted throughout the entire country governing the handling of collection items, and this circular was the result of the combined judgment and wisdom of the committee as to the best method of effecting bank collections. Previous to that time there had been no uniform method of handling collections, except as items flowed more or less customarily through the reserve cities to the central reserve cities of the country, but this brought all into one complete form, and affects all the country alike, universally.

(Witness excused)

(Court thereupon adjourned, at 5:00 o'clock (P.M., to reconvene at 9:30 o'clock the (following morning, Friday, May 9, 1924, (at which time further proceedings were had (as follows:

LYNN P. TALLEY,

was recalled as witness by the defendant, and further testified as follows:

REDIRECT EXAMINATION

It appears that in settlement of this item the Willcox bank gave a draft on another bank. Assuming that draft had been honored and had been paid by draft on another bank, and one bank after another remitting in drafts, and that resulting in an endless sort of chain and just kept on going is prevented because items which are handled for collection tend to converge all the time, mis-

cellaneous checks are remitted to centers, gathered up by banks all over the country, and remitted to centers like El Paso and Dallas, and Fort Worth, New Orleans and Los Angeles, and so on, then those checks are sent out or handled in bulk by those centers, and sent out to the point of payment and then the natural practice is for banks at those points to draw drafts of remittance where they were personally sent checks to accumulate balances, and they converge at those points and go through local clearing houses, and the differences are settled in actual cash. So if those checks originate at smaller towns the gradual tendency is towards centers and finally get to a clearing house, where they settle in cash, the returns for them get into the clearing house, you might say in the second step of collection, and are offset against each other in the local clearing house, and the balances settled in actual cash.

This transaction involved in this suit occurred nearly four years ago, away back in December of 1920. There was no difference in the principle involved of collection then and now, but there is a good deal of difference now from what there was then in the matter of actual settlement. To give you an example, at that time non-member banks and member banks to a very great extent were not only permitted to but did remit in what is termed convenient exchange, and convenient exchange means exchange which is convenient to the paying bank. Now, then, in the evolution of the Federal Reserve system the transactions became more concentrated and in larger volume, and the member banks began to use the facilties of the Federal Reserve System more and more, and that tended to simplify the matter of handling and settling for collections. For instance, the banks soon learned over the country that checks coming in such large volume to the Federal Reserve Bank for collection, that the point of settlement was the Federal Reserve Bank and the Fed-

eral Reserve Bank Branch cities, therefore they concentrated their reserve interest bearing balances with correspondents in those cities, or they established accounts in such cities which they did not carry before, because the points of settlement were some way changed, the option of paying in cash or by draft was originally given and has continued all along, but it is very rarely now as compared with the condition at that time, four or five years ago, that any member bank exercises its option per se to send cash in payment of its check for collection, because the Federal Reserve Bank permits member banks to send them cash at any time they desire for the credit of their reserve account, and adds to the expense of the Federal Reserve Bank, transportation charges, therefore it is not necessary for the bank to exercise that option per se. At any time it so desires it may draw checks against its reserve balance to cover checks. Convenient exchanges means exchange that is convenient to the remitting bank, and that was in vogue at the time of this transaction, among non-member banks.

RECROSS EXAMINATION:

Going back to my illustration of this endless chain, the Willcox Bank remitted in payment of the County of Cochise check its check on the Central Bank of Phoenix; the Central Bank of Phoenix might have remitted with a check, had it had the funds, on some other convenient exchange, some other convenient bank, and the only thing that terminates that is the tendency of these things to converge in to the point of settlement. Our requirements as against our member banks that they remit either in exchange at the city of the collecting bank, or by check on their reserve, or by cash, has a tendency to put an end to that endless chain and bring it to final payment quicker. Phoenix is a settling center itself. If we had

required the Central Bank of Willcox to remit with some form of check payable on our resrve here that would have tended to receive return of the proceeds of whatever Phoenix remitted that much quicker.

Taking as an illustration, if we had sent to us a check here by the First National Bank of Douglas, a remittance paid by check drawn on the First National Bank here, the First National Bank here is in this reserve city, and we would in due course collect that check, through the clearing house, however, but we do not require the local bank here, the First National Bank, to pay us with a check on its reserve fund in our bank; we collect that check through the clearing house, or might present direct to the local bank; checks in El Paso received by the Federal Reserve Branch here on local banks are collected through the agency of the clearing house.

With reference to whether we require local banks here —we fuse their cashier's checks—we require them to pay with a check on their reserve with us or in cash, and we will not wait until the succeeding morning on it but require it to be paid that same day, I will say on single collection items that is in fact, but not in the usual course of business, as return for items which have been previously sent out. If we accept a cashier's check we do not give credit until the following day, but the item, proceeds of which are credited that day, we do not take cashier's check for.

REDIRECT EXAMINATION

We would take it, though, and give credit next day.

(Witness excused)

E. W. GRAVES,

was recalled as a witness by the defendant, and further testified as follows:

DIRECT EXAMINATION

(Counsel handed witness a document): That is a reconcilement of a statement; the Federal Reserve Bank sends a statement of account, and this is the report of our Assistant Cashier. It reads here "Your statement of account to January 31st, 1921, has been received and carefully reconciled with our records. The above is a correct reconcilement of your balance.

MR. PETICOLAS: What is the materiality of that Mr. Culwell? what do you offer it for?

MR. CULWELL: To show that the First National Bank of Douglas and the Federal Reserve Bank agreed on the amount of the balance after this transaction; in other words, that it accepted the statement of the Federal Reserve Bank to the charge-back of this $5,000.00 item.

MR. PETTICOLAS: I don't think, if the Court please, it is admissible for that purpose. I expect before making objection I had better ask Mr. Graves a question or two about it.

CROSS EXAMINATION:
(By Plaintiff)

Between our bank and the Federal Reserve Bank, and between us and our customers, there is a constant daily fluctuation of balances. We receive a daily transcript of the account from the Federal Reserve Rank, and this document is simply a reconcilement between our bank and the Federal Reserve Bank of the account between them. There is nothing on here specially in reference to the particular item of $5,000.00 that is involved in this case.

MR. PETICOLAS: If the Court please, I object to it

on two grounds; one is it would not be binding on the City of Douglas in any event, and the other is that it is plainly not an adjustment between them of this item in the nature of a compromise and settlement or accord and satisfaction, and for that reason I would not think it was admissible in evidence.

MR. CULWELL: I want to ask him one other question on that line to develop that.

REDIRECT EXAMINATION:

(By Defendant)

The Federal Reserve Bank notified us of the charge-back of this item about the 12th of January, 1921. There was an exception taken to the charge-back of that $5,000.00 item prior to January 31st, when this reconcilement sheet was presented; I don't know whether it showed on the reconcilement sheet or not; I do not ordinarily see those, those are checked up by the Assistant Cashier and signed by him, but there was an exception taken to the charge, which would show by the correspondence. About the 18th or 19th of January we accepted the charge-back, then on the 31st of January this reconcilement of the account was presented to us, and when it was presented to us that charge had already been credited, this reconcilement sheet shows any differences we had with the Federal Reserve Bank had all been fixed up; that is the purpose of the reconcilement sheet. One of these sheets is good for thirty days. (Council handed witness another document): That shows the 28th of February, 1921, reconcilement. This item of $5,000.00 was reconciled by these sheets, under protest.

RECROSS EXAMINATION:

(By Plaintiff)

We did as a matter of fact make an exception to the Federal Reserve Bank with reference to this time; this letter shows that.

MR. STROUD: We object to that question, unless he shows how the exception was made, and if in writing we would like to have the writing as evidence of that exception.

THE COURT: I overrule the objection.

. . .

Subsequently we did charge that item back to the City of Douglas. There was nothing that I know of that we could have done to have avoided the necessity of assenting to that reconcilement, after what we had done. We had notified them we did not agree to it. We had to continue business with the Federal Reserve Bank, compelled to be a member of the system. We had no power that I know of to force them to allow us that item on that account. We did not intend by signing that reconcilement to wipe out any action on that account, absolutely not.

MR. STROUD: That is a question of law.

THE COURT: I overrule the objection.

REDIRECT EXAMINATION
(By defendant)

We made a protest at the time we accepted the charge-back. In my letter of January 21st I say "We charged our depositor with the amount of $5,000.00 and credited it to the Federal Reserve Bank Janary 19th. My letter of protest was prior to that, but to the best of my recollection this letter of January 21st was the last letter on the subject, relative to that item. Then on the last day of that month we signed this reconcilement sheet. We did not enter any exception on the sheet itself, I felt that in consideration of the letter they had written me in re-

gard to it there was nothing for us to do but follow their instructions. Considering the arbitrary rulings we get from them I would question whether we could have declined to pay it, I don't know.

MR. PETICOLAS: I would like to add to my objection, it is not plead by them as settlement or adjustment, are inadmissible as such, and that it is evidently not a settlement and adjustment, or an accord and satisfaction, and in no event would it be binding on the City of Douglas.

MR. CULWELL: We plead this reconcilement in our answer.

THE COURT: I will admit the testimony.

(Defendant thereupon introduced in evidence the two reconcilement statements identified by the witness, same being marked Deft. Ex. 4 and Deft. Ex. 5, respectively, and being in words and figures as follows):

REPORT OF — Deft. 4

First National Bank, Douglas, Ariona. — TO EL PASO BRANCH Federal Reserve Bank of Dallas El Paso, Texas

Date of Entry	Description	Amount	Date of Entry	Description	Amount
	WE DEBIT (Not in Your Statement)	(in red) Date since Credited		WE CREDIT (Not in your Statement)	(in red) Date since debited
31	Rem Ret	271 67 9 —	2-2 2-1	31 Yr 29th	4044 87 2-1
	YOU DEBIT	Date since		YOU CREDIT	Date since

(Not on our books) Credited (Not on our books) Debited

(IN RED): NOTICE—PLEASE INSERT DATE EXCEPTIONS HAVE BEEN LATER DEBITED OR CREDITED.

31	Cy	60000—2-1	Dft afloat	5881 21
	P & I	91 2-1		
12-22	Ret	60—)		
.		)		

(In pencil) See file 26-10 & 220-1 for correspondence.

BALANCE DUE YOU (As per our Books)		BALANCE DUE YOU (As Per Your Statement)	
BALANCE DUE US (As per Your Statement)	17830	BALANCE DUE US (As Per Our Books)	68245 50
TOTAL	78171 58	TOTAL	78171 58

Your statement of Account to 1-31-21 has been received and carefully reconciled with our records.

The Above is a correct reconcilement of your balance $17830.00* due us.

Yours very truly,

(Signed) M. L. Hartley

A.C.

Use only an authorized signature.

Remarks

Your attention is respectfully invited to the fact that this is our only record showing a complete reconcilement of your account. It is therefore to our mutual interests, that extreme care be exercised, to the end, that the correct balance, as shown by your books be inserted, together with all exceptions

necessary for balancing purposes, and that statement be signed by one authorized and returned to us immediately.
In the case of old exceptions, would suggest that statement be accompanied by letter, giving all data available, including dates, etc. This will aid us considerably in effecting an early adjustment.
Please reconcile and mail in at once.

EL PASO BRANCH,
Federal Reserve Bank of Dallas.

Deft. ex 5.

(Stamped)
A reconcilement 30 days old is worthless.
For your satisfaction, as well as our own, please.

R U S H

REPORT OF
FIRST NATIONAL BANK,
DOUGLAS,
Arizona.

Feb 28 1921

TO EL PASO BRANCH
Federal Reserve Bank of Dallas
El Paso, Texas.

Date of Entry	Description	Amount	Date of Entry	Description	Amount
	WE DEBIT (Not in Your Statement)	(in red) Date since Credited		WE CREDIT (Not in your Statement)	(in red) Date since debited
28	from City Rem	25000 — 519 67	3-4 3-1	DFts	14612 91

YOU DEBIT (Not in our books)	Date since Credited	YOU CREDIT (Not in our books)	Date since Debited

(IN RED): NOTICE—PLEASE INSERT DATE EXCEPTIONS HAVE BEEN LATER DEBITED OR CREDITED.

12-22 Ret 60 —))

(In pencil) See file 26-10 & 220-1 for correspondence)

BALANCE DUE YOU (As per our Books)		BALANCE DUE YOU (As Per Your Statement)	
BALANCE DUE US (As per Your Statement	69,010.85	BALANCE DUE US (As Per Our Books)	79977 61
TOTAL	9459 52	TOTAL	9459 52

Your statement of Account to 2-28-21 has been received and carefully reconciled with our records.

The above is a correct reconcilement of your balance $69,010.85 due us.

(In red) 3-12-21 Yours very truly,

(Signed) A. B. Packard, Cashier

Use only an authorized signature.

Remarks

Your attentions is respectfully invited to the fact that this is our only record showing a complete reconcilement of your account. It is therefore to our mutual interests, that extreme care be exercised to the end, that the correct balance, as shown by your books be inserted, together with all exceptions necessary for balancing purposes, and that state-

ment be signed by one authorized and returned to us immediately. In the case of old exceptions, would suggest that statement be accompanied by letter, giving all data available, including dates, etc. This will aid us considerably in effecting an early adjustment.

Please reconcile and mail in at once.

EL PASO BRANCH,
Federal Reserve Bank of Dallas.

There is a suit now pending in the City of Douglas between the City of Douglas and the First National Bank of Douglas. The City of Douglas is the plaintiff; they are suing us for this $5,000.00; that case has not been tried.

(Witness excused)

* * * *

M. CRUMP,

a witness for the defendant, being first duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION:

My name is M. Crump. I am connected with the Federal Reserve Bank of Dallas, as Cashier of the El Paso Branch of that Bank. I have held that place approximately five and a half years. As Cashier I have official control of the physical properties of that Branch, including its money, checks, notes, and such other instruments as may come into its possession.

I am familiar with this controversy growing out of the check given by the County of Cochise to the City of Douglas and passing through the Federal Reserve Bank. I did not have anything to do physically with handling

the item,—only in an official capacity. It was handled by the check department of the Branch Bank; I know how it was handled, it was handled under my supervision.

When the item reached the El Paso Branch of the Federal Reserve Bank it was forwarded direct to the drawee bank. That was the usual and customary way of handling items of that kind.

When we send an item out we expect it to be settled by draft on that bank.

In sending items direct to the bank on which drawn it is usual for that bank to settle by exchange draft. If we had demanded or wanted cash on it we would not have sent it direct. We receive cash very infrequently in settlement of items sent out by us for payment.

The usualy and customary methed of settling cash letters is by exchange draft; that is one of the steps in process of settlement only.

Final payment, in banking language, means the payment of an item in a manner that results in cash or its acceptable equivalent.

There was no difference in the handling of this item to that which is ordinarily employed in handling similar items.

The Federal Reserve Bank has at times required payment of items in cash. This is done if there is reason to question the solvency of the drawee bank, and that method is followed also in the event a bank which is not a member bank of the Federal Reserve System refused to receive and make a payment for checks at par.

When we call for the cash we have a representative of our bank to proceed to the town in which the drawee bank is located, and checks are forwarded to him and he presents them for cash payment over the counter. Offhand I would say that has happened probably five or six times in three or four years.

We did not have any information at the time this item

was sent out that this bank (Central Bank of Willcox) was either insolvent or badly extended, or that there was any danger in sending in that way. We thought it was entirely safe to send this item directly to the Central Bank of Willcox. We would not have so sent it if we had had information that it might result in loss. I had been receiving returns continuously from that bank on other items. The returns from that bank during the past few months previously had been entirely satisfactory; they were satisfactory to the extent we were perfectly willing to continue sending them to them in that way, and that was the reason we did it.

CROSS EXAMINATION:

I do not know of the circumstance of some years ago the Federal Reserve Bank, El Paso Branch, requiring the Willcox Bank & Trust Company, a non member bank, to remit for cash letters in checks on the First National Bank of El Paso, chargeable to the First National Bank's reserve with our bank or with the Dallas bank. I have known of such an arrangement having been made with reference to member banks, requiring them to remit in reserve funds, checks on reserve funds; I have not known of any instance in the case of non-member banks.

If we receive a check from an out of town bank payable on one of the local banks here in town, we refuse to accept their Cashier's Check in payment of that item, as a matter of practice.

I was perfectly satisfied with the condition of the Central Bank of Willcox, and knew nothing to give rise to any apprehension in my mind. I don't recall that there had been but very few failures at that time in Arizona.

I do not recall at this time three checks or theirs that went to protest, one for $19,000.00, and one for $15,000.00 and one for $3500.00, and that I protested one of those

checks myself as a notary, but I do have a faint impression some time beyond, back of that date some little difficulty had arisen with that bank in connection with some sort of remittance transactions, and they were such as to not cause me to have any apprehension with respect to the payment of checks. I do not recall the capital of that bank, but I regarded it as a small bank, in a small town in Arizona, and I was willing to accept its check on another non-member bank in response to our cash letter, although we required local correspondents to pay in cash.

(Witness excused)

THE DEFENDANT RESTED.

H. E. CHRISTY,

a witness for the plaintiff, in rebuttal, was duly sworn by the Clerk, and testified as follows:

DIRECT EXAMINATION:

My name is H. E. Christy. I have been in the banking business, was in the banking business about sixteen years. I am familiar with the custom of the El Paso Branch of the Federal Reserve Bank with reference to collecting checks on the local banks here in town. The ordinary checks are cleared through the clearing house, but where a collection item comes in direct to the Federal Reserve Bank they send it over and demand a check drawn on our account in the Federal Reserve Bank,—that is, a check by us drawn on our reserve account in the Federal Reserve Bank. That is equivalent to cash to them. They will not accept our Cashier's check for it. They will not wait on us until next day, they demand that we furnish them that check that day.

CROSS EXAMINATION:

That is not for immediate credit; that has reference to collection items that come to the Federal Reserve Bank, drawn on an individual bank and is sent to that bank, and they want a check drawn on the Federal Reserve Bank, will not take any other kind of check. When I say they demand immediately our check on the Federal Reserve Bank I mean for items that may come for collection, they are demand items, they get a demand draft down there on us, that is payable on demand and they require us to pay it that day, and therefore in order to pay it that day they require us to give a check on us because they have got that cash there; that is absolutely what I mean. They do not take any Cashier's checks, in my experience; they do not take a Cashier's check and give us credit for it next day, never have in my experience.

Ordinary checks that come through the Federal Reserve Bank are cleared through the clearing house; bill of lading items and items which may come through the Federal Reserve Bank for collection are presented and they demand a check drawn on the reserve account in the Federal Reserve Bank. Those are not necessarily demand items, bill of lading items are not demand items.

The clearing house banks here appoint some one at the clearing house to reconcile our statements, or our accounts, and that man at the Federal Reserve Bank makes the settlement between the banks and gives a check to the creditor drawn on the funds of the debtor at the Federal Reserve Bank, but those are clearing house settlements.

Say the Border National Bank sends out an item out of town, drawn on some bank out of town, I expect that that would be taken up by exchange draft, that is the ordinary way of doing, that is the only way. I don't know

that any of the items sent out by any bank I was with ever settled with actual cash unless we demanded it on account of probably being a failure of the bank or some other reason; otherwise it is always by draft; that is the usual custom.

REDIRECT EXAMINATION:

The regulations in that regard of the Federal Reserve Bank are more strict than those of the local individual banks.

(Witness excused)

H. F. ELMENDORF,

a witness for the plaintiff, in rebuttal, was sworn by the Clerk, and testified as follows:

DIRECT EXAMINATION:

My name is H. F. Elmendorf. I am a stock broker. I am located at 120 North Stanton Street, El Paso.

I have had experience with the El Paso Branch of the Federal Reserve Bank with reference to what medium of payment they would accept for collection on me.

Q. What has been your experience?

MR. CULWELL: Just a minute. We object to that for want of materiality as far as developed here. (To the witness): I believe you said you were a stock broker, didn't you?

THE WITNESS: Yes, sir.

MR. CULWELL: I object to it then as wholly immaterial to any issue here.

MR. PETICOLAS: If the Court please, their position

has been that although the law casts on the collecting agent the burden of collecting an item in cash, that they are released from this by reason of a universal custom, and our attempt has been to show there is no such universal custom. Of course, in the nature of the ordinary business transactions of this day and time a large proportion of the collection items are collected in checks, but it is not an absolute custom and anything that goes to show the exception to it is admissible in evidence. In other words, to put it short, you can't prove custom by specific instances but you can prove absence of custom by specific instances.

MR. CULWELL: This is custom between banks we are talking about. I don't know— there never would be any end to it if you undertook to go in and say what the custom was, or want of custom, between individuals in their dealings with banks. What a bank might do relative to handle an item against an individual, and the method of remittance for that, would not tend to show what would be the custom if the item was against a bank.

MR. PETICOLAS: It seems to me, if the Court please, the testimony is admissible under his allegation of a general custom; I am not sure of his allegations, but I do not think he confines it to banks, and it goes to the mass of this information we are getting here about how these things are done, and while not of conclusive weight perhaps is admissible in evidence.

THE COURT: I will sustain this objection, and exclude the testimony.

MR. PETICOLAS: Very well; there is no further question I want to ask Mr. Elmendorf.

(Witness excused)

TESTIMONY CLOSED:

At the conclusion of the evidence in this case, counsel for the respective parties proceeded to argue the case to the Court, and at the conclusion of the argument the Court took the case under advisement; and thereafter, to-wit, on the 29th day of May, A. D. 1924, the Court rendered decision in favor of the defendant herein, the Federal Reserve Bank of Dallas, to which action of the Court the plaintiff, City of Douglas, then and there duly excepted.

And thereafter, on the 28th day of July, 1924, the Court filed **Findings of Fact and Law**, as follows:

In the District Court of the United States in and for the Western District of Texas, El Paso Division.

THE CITY OF DOUGLAS, a Municipal Corporaion, *Plaintiff.*
vs.
FEDERAL RESERVE BANK OF DALLAS, *Defendant.*
No. 847 — Law.

Messrs. Boyle, Knapp & Pickett, and
Messrs. Whitaker & Peticolas,
Attorneys for Plaintiff.

Messrs. E. B. Stroud, Jr., and Turney, Burges, Culwell, Holliday & Pollard,
Attorneys for Defendant.

This is an action at law brought by the City of Douglas, Arizona, a municipal corporation, against the Federal Reserve Bank of Dallas to recover $5,000.00 alleged to be the amount of a check drawn by the County Treasurer of Cochise County, Arizona, to the order of said City, upon the Central Bank of Willcox, Arizona.

The check was drawn on December 22, 1920, and was

delivered to the City of Douglas on December 24, 1920, at which times and at all times up to December 31, 1920, the Treasurer of Cochise County had on deposit in the Central Bank of Willcox sufficient funds to meet said check.

On December 24, 1920, the check was properly endorsed by the City of Douglas and deposited with the First National Bank of Douglas, Arizona, for collection and credit. The full amount of the check was by said bank entered as a credit in a pass or deposit book and delivered to the City of Douglas, on which pass book there was a printed indorsement as follows: "All out of town items credited subject to final payment." There was no other contract or agreement made between the City of Douglas and the said First National Bank of Douglas than such as arose impliedly from the acceptance by said bank of said check for collection. And there was no statute of the State of Arizona upon the subject which entered into or changed or modified said contract in any respect.

The First National Bank of Douglas was a member of the Federal Reserve Banking System created by Congress. Said bank immediately transmitted said check by mail to the El Paso Branch of the Federal Reserve Bank of Dallas for collection. It was received by said Branch Bank on December 27, 1920, and was by it forwarded direct to the Central Bank of Willcox for payment, reaching said drawee bank on December 30, 1920. Thereupon the Central Bank of Willcox charged the County Treasurer of Cochise County with the amount of the check and in payment therefor issued and mailed to said El Paso Branch Bank, instead of cash, it's Cashier's Check, drawn on the Central Bank of Phoenix, Arizona, for the sum of $6,426.17, which included some small items other than $5,000.00 check.

Upon receipt of said Cashier's Check the El Paso

Branch Bank forwarded same to the Branch Bank at Los Angeles of the Federal Reserve Bank of San Francisco for collection. On January 5, 1921, said Los Angeles Branch Bank forwarded said Cashier's Check direct to the Central Bank of Phoenix, drawee, for payment, reaching said bank on January 8, 1921, and was on said date protested for non-payment because of the want of sufficient funds of the Central Bank of Willcox with the Central Bank of Phoenix to cover the check.

On January 19, 1921, both of these last named banks, being insolvent, closed their doors and ceased to do business. Thereupon the El Paso Branch Bank charged the First National Bank of Douglas with the amount of said $5,000.00 original check, and in turn the First National Bank charged it to the account of the City of Douglas and credited the amount thereof to the defendant.

It is charged by the City of Douglas, the plaintiff herein, that the El Paso Branch of the Federal Reserve Bank of Dallas, defendant herein, was negligent in sending the check direct to the drawee, the Central Bank of Willcox, and in accepting its Cashier's Check in payment thereof instead of cash.

In view of the conclusion I have reached it is necessary that I consider and discuss but one question and that is: Can this action be maintained by the plaintiff, the City of Douglas, against the Federal Reserve Bank of Dallas? Stating the question in another form: Is the First National Bank of Douglas with which the check was deposited by the City of Douglas for collection alone responsible to the City or is the Federal Reserve Bank of Dallas, to which the check was forwarded for collection by the initial bank of deposit, directly liable to the City of Douglas?

Upon this question the state decisions are in conflict beyond the possibility of reconciliation. Some of the states following the "New York Rule," so called, have

held that the initial bank alone is responsible to the owner and that there is no direct liability to the owner on the part of the correspondent bank. On the other hand many of the states following the "Massachusetts Rule," so called, have held exactly the contrary, viz: that the initial bank by the mere fact of deposit for collection, is authorized to employ sub-agents, who thereupon become the agents of the owner and directly responsible to him for their defaults.

Our Supreme Court after reviewing these two lines of decisions approved the "New York Rule," Exchange National Bank vs. Third National Bank, 122 U. S. 276; and this decision has been followed by the inferior federal courts without exception so far as I have been able to ascertain, Taylor & Bourinque Co. vs. National Bank of Ashtabula, 262 Fed. 168; First National Bank of Denver vs. Federal Reserve Bank of Kansas City, Mo., 283 Fed. 700.

It is recognized of course that this rule may be varied or changed by contract, express or implied. For instance it was held in Federal Reserve Bank vs. Malloy, 264 U. S. 160, that a Florida statute controlled the relations of the drawee to the initial bank of deposit with reference to which it was presumed they dealt with each other. In that case the deposit for collection was made in the State of Florida and the court held that this statute "had the effect of importing the Massachusetts Rule into the contract with the result that the initial bank had implied authority to intrust the collection of the check to a sub-agent and that sub-agent in turn to another; and the risk of any default or neglect on their part rested upon the owners." I think that the inference is clear that in the absence of the Florida statute the court would have applied and enforced the New York Rule in that case; and that there can be no doubt that the New York Rule still prevails in the federal courts.

In Texas the Massachusetts Rule is now the settled rule of decision. In Arizona the court of last resort has not passed upon the question. Neither in Texas nor Arizona is there any legisslation affecting the question.

However, as I view the question under consideration in this case whatever may be the rule of decision in Texas or Arizona the federal court should apply it own rule—the New York Rule—inasmuch as the question to be decided is one of general commercial law and not the construction or application of any state statute. Even had the Massachusetts Rule been established by the courts of Arizona where the contract was made, the New York Rule would still be the rule of decision in this court.

On a question of general or commercial law, such as the liability of a bank accepting for collection commercial paper, the federal courts are not bound by decisions of the state in which the contract was made or to be performed but they must upon their independent judgment determine the question of liability by reference to all the authorities. Swift vs. Tyson, 16 Pet 1; B. & O. Ry. Co. vs. Baugh, 149 U. S. 368; Taylor & Bourinque Co. vs. National Bank of Ashtabula, 262 Fed. 168; Spokane & Eastern Trust Co. vs. United States Steel Products Co., 290 Fed. 884; St. Nicholas Bank vs. State National Bank, 13 L.R.A. 241; Faulkner vs. Hart, 82 N. Y. 413; Liverpool S. S. Co. vs. Phoenix Life Ins. Co., 129 U. S. 397.

This our Supreme Court has done in the determination of this question, and the rule laid down by it must be followed by this and all other inferior federal courts. And under this rule there is no liability on the part of the Federal Reserve Bank of Dallas, defendant, to the plaintiff, the City of Douglas. Counsel for plaintiff contends that the contract for collection of the check was not of the ordinary type but was varied by the special stipulation printed on the pass or deposit book in which the credit entry was made; that said special stipulation had the ef-

fect of importing the Massachusetts Rule into the contract. I do not think this contention sound. This stipulation added nothing to the contract and did not take anything from it. Checks taken for collection and credited are always in the absence of special agreement subject to final payment. From what has been said it follows that I am of opinion judgment should be rendered for defendant, and it is so ordered.

(Signed) W. R. SMITH,
U. S. District Judge.

To which **Findings of Fact and Law** the plaintiff filed its **exceptions,** on the 28th day of July, 1924, as follows:

In the United States District Court for the Western District of Texas, El Paso Division.

CITY OF DOUGLAS,	)	
Plaintiff,	)	
vs.	)	No. 847 — Law.
FEDERAL RESERVE BANK	)	
OF DALLAS,	)	
Defendant.	)	

I.

Comes now the Plaintiff and excepts to the Findings of Fact and Law (or opinion of the Court) in that the same makes no finding with reference to whether or not the Federal Reserve Bank of Dallas was negligent in accepting the cashier's check of the Central Bank of Willcox instead of cash.

II.

The said Findings of Fact and Law (opinion) are excepted to because the evidence shows that the Federal Reserve Bank was negligent in accepting the cashier's

check in lieu of cash and the Court should have so found.

III.

The Plaintiff excepts to the said Conclusions of Fact and Law (opinion) because the Court found that there was no other contract between the City of Douglas and the First National Bank of Douglas than such as arose impliedly from the acceptance of said Bank of said check for collection and the endorsement on the pass book, because Mr. Graves, a witness, testified specifically on this subject and showed clearly that this check was merely taken for collection to be forwarded for collection and that no final credit was to be given the City of Douglas until the check had been collected.

IV.

The Plaintiff excepts to the Court's Conclusions of Law and Fact (opinion) because the Court finds that the contract for collection was such that it did not have the effect to import the Massachusetts rule into the contract, it being apparent under the decisions that the distinction between the New York rule and the Massachusetts rule is determined entirely by the contract between the parties. If the check is discounted or sold to the Bank so that it becomes its property, then the New York rule might have applied, but if the check is deposited for collection so that it is within the contemplation of the parties that the initial Bank will have to send the check to some other Bank at some other place to make the collection and will not give credit until the check is finally paid, then the Massachusetts rule enters into the contract even under the Federal Court decision.

V.

Plaintiff excepts to the Conclusions of Law and Fact (opinion) because the same find for the Defendant and do not find for the plaintiff.

VI.

Plaintiff excepts to the Final Court Findings of Law (opinion) because, while he finds that the New York rule may be varied by contract—express or implied—he erroneously finds that it was not so varied in this instance, and Plaintiff shows that the facts with reference to the contract between the City of Douglas and the First National Bank of Douglas contained in the Record show clearly that it was contemplated by the parties that the check would be taken for collection; that no definite credit would be given against it until final payment; that it was also contemplated that it should be forwarded to some different bank in a foreign city, and thereby parties impliedly agreed that the liability of the First National Bank of Douglas should only be to select the competent collecting agent and that it should not be liable for the negligence of such agent. Wherefore, the Massachusetts rule is properly shown to have applied with the facts in this case.

KNAPP, BOYLE & PICKETT,
and
WHITAKER & PETICOLAS,
Attorneys for Plaintiff.

We, the undersigned, here now agree that the above and foregoing constitutes a full, true and correct statement of all of the testimony introduced in the trial of the above entitled and numbered cause.

KNAPP, BOYLE & PICKETT,
WHITAKER & PETICOLAS,
Attorneys for Plaintiff,
City of Douglas.

E. B. STROUD, JR.,
A. H. CULWELL,
Attorneys for Defendant,
Federal Reserve Bank of Dallas.

The foregoing bill of exceptions and statement of facts having been presented to me and having been examined and found correct is here now approved and ordered filed among the papers of this cause.

Done at El Paso, Texas, this 28 day of July, 1924.

W. R. SMITH,
United States District Judge,
Western District of Texas.

Filed July 28, 1924. D. H. Hart, Clerk, by J. N. Phillips, Deputy.

Plaintiff's Application for Writ of Error

In the District Court of the United States in and for the Western District of Texas, El Paso Division.

* * *

THE CITY OF DOUGLAS	)	
vs.	)	No. 847 Law.
FEDERAL RESERVE BANK OF DALLAS.	)	

APPLICATION OF PLAINTIFF FOR WRIT OF ERROR.

Now comes the plaintiff, the City of Douglas, and represents that at the term of the District Court of the United States, in and for the Western District of Texas, El Paso Division, in a suit depending in said Court, between The City of Douglas as plaintiff, and the Federal Reserve Bank of Dallas as defendant, numbered 847 Law on the docket of said Court, judgment was rendered by the Court against your petitioner, The City of Douglas; that in the proceedings and in the rendition of said judgment, there was and is error, to the great prejudice and damage of your petitioner, The City of Douglas.

Petitioner further represents that it has filed in this

Court its bill of exceptions and assignments of error, and here presents the same for the inspection of the Court, and prays that after inspection thereof, it be granted a writ of error to remove said judgment and proceedings had in said cause to the United States Circuit Court of Appeals for the Fifth Circuit, whose sessions are fixed to be held in the City of New Orleans, in the State of Louisiana; in the City of Atlanta, in the State of Georgia; in the City of Montgomery, in the State of Alabama, and in the City of Fort Worth, in the State of Texas, for revision, correction and reversal; and as in duty bound, will ever pray.

KNAPP, BOYLE & PICKETT,
WHITAKER & PETICOLAS,

Attorneys for Plaintiff, The City of Douglas.

GRANTED:

W. R. SMITH,
United States District Judge.

Filed July 28, 1924. D. H. Hart, Clerk, by J. N. Phillips, Deputy.

Assignment of Errors

In the United States District Court for the Western District of Texas, El Paso Division.

THE CITY OF DOUGLAS	)	
vs.	)	No. 847 Law.
FEDERAL RESERVE BANK OF DALLAS.	)	

PLAINTIFF'S ASSIGNMENT OF ERROR.

Comes now the plaintiff, City of Douglas, and says that in the Report and Proceedings of the above styled and

numbered cause there is manifest error, which it assigns as such, as follows:

I.

The Court erred in refusing to render judgment for the plaintiff and in rendering judgment for the defendant because there is privity of contract between the City of Douglas and the Federal Reserve Bank of Dallas under the facts of this case in that the Supreme Court of the United States has never definitely adopted what is known as the "New York Rule," with reference to the liability in favor of a depositor whose check is uncollected through negligence, that only the forwarding bank is responsible.

II.

The Court erred in refusing to render judgment for the City of Douglas and in rendering judgment in favor of the Federal Reserve Bank of Dallas because the facts showed that there was negligence on the part of the Federal Reserve Bank of Dallas in failing to require the payment of the check which it undertook to collect in cash, and in accepting in settlement thereof the cashier's check of the Central Bank of Willcox; and because, even if the rule known the "New York Rule" had been adopted by the Courts of the United States, the contract between the City of Douglas and the First National Bank of Douglas as expressed in the Pass Book in which the entry of the deposit was made and as shown by the testimony of Mr. Graves, the Vice President of the First National Bank, was sufficient to establish that the First National Bank of Douglas undertook only to forward the check for collection to a proper collecting agent, and therefore under either the "New York Rule" or the "Massachusetts Rule" there was privity of contract between the City of Douglas and the Federal Reserve Bank of Dallas.

III.

The Court erred in refusing to find for the plaintiff and finding for the defendant because the words "Out of Town items taken subject to final payment," printed on the Pass Book in which the entry of this deposit was made, are sufficient as a contract to avoid what is known as the "New York Rule" and to establish that the First National Bank of Douglas was only the agent to forward the check and that it did not undertake itself to collect the check and did not undertake any responsibility in regard to the collection of the check, and this being true, the Federal Reserve Bank of Dallas was the agent for collection of the City of Douglas, and having been guilty of negligence in regard to the collection, by which the money was lost, is responsible therefor.

IV.

The Court erred in refusing to find for the plaintiff and in finding for the defendant because the facts show that the Federal Reserve Bank of Dallas was negligent in accepting in settlement of the collection item which it received from the First National Bank of Douglas the cashier's check of the Central Bank of Wilcox, for the reason that when the Central Bank of Wilcox issued its cashier's check in payment of said item it deducted the amount from the account of the County of Cochise, and thereby the City of Douglas lost any right of action against the County of Cochise and the Central Bank of Wilcox, failing, that cashier's check was never paid, and thereby the City of Douglas lost the amount of the check, which was directly attributable to and proximately caused by the negligence of the Federal Reserve Bank of Dallas in accepting said cashier's check.

V.

The Court erred in refusing to find for the plaintiff and in finding for the defendant because the facts show

that it was negligent in accepting the cashier's check of the Central Bank of Wilcox and no custom sufficient to protect it and sufficiently universal to be a custom was shown by the defendant, and it was affirmatively shown that in collecting items locally where it was acting in its own interest and giving credit for a check it habitually required local banks to pay either in cash or by check on their reserve account with it, which was equivalent to cash.

VI.

The Court erred in failing to find for the plaintiff and in finding for the defendant because the facts showed circumstances of previous failure to meet obligations on the part of the Central Bank of Wilcox sufficient to put the Federal Reserve Bank of Dallas on inquiry and sufficient to impose a liability on it in this instance, even though it might be conceded argumentatively that there was a custom to collect out of own items and accept checks of non-member banks.

VII.

The Court erred in its Findings of Fact and Law, (or opinion of the Court) in that the facts in this case show that the check deposited by the City of Douglas in the First National Bank of Douglas was deposited for collection; that it was not sold to or discounted by the First National Bank of Douglas; that is was within the contemplation of the parties, and thus a part of the contract between them, that the check should be taken for collection and should be collected by another, other and foreign, bank and that it should be sent to such other bank for collection, and that credit was given only subject to such collection being made, and that it was therefore clearly the contract between the parties that the only liability against the First National Bank should be to select a proper agent to make such collection and there

should be no liability against the First National Bank of Douglas for the negligence of such other forwardee bank.

VIII.

The Court erred in its Conclusions of Fact and Law (opinion) because he finds that the contract for collection was such that it did not have the effect to import the Massachusetts rule into the contract, it being apparent that under the decisions of the United States Federal Courts the distinction between what is known as the New York rule and the Massachusetts rule is a distinction upon the facts of the particular case; that is to say, if the check is discounted and sold to the initial bank so that it becomes its property and credit is given for it, then only the initial bank is liable for any negligence, but if the check is deposited with the initial bank for collection so that it is within the contemplation of the parties that the initial bank will have to send the check to a forwardee bank for collection, and if it is the agreement of the parties the initial bank will not give credit until the check is finally paid, then the rule known as the Massachusetts rule is applicable and the liability is against the forwardee bank and not against the initial bank.

IX.

The Trial Court erred in finding that while the New York rule may be varied by contract that it was not so varied in this instance because the facts show that it was clearly contemplated by the parties in this instance that the check should be taken only for collection; no definite credit should be given until final payment; that it should be forwarded to another bank for collection, and that the First National Bank should only be liable for care in selecting a competent collection agent.

WHEREFORE, the Plaintiff, City of Douglas, PRAYS

that the judgment rendered in favor of the Federal Reserve Bank of Dallas in the District Court of the United States for the Western District of Texas be RESERVED and rendered, or be REVERSED and remanded for a new trial, as in the judgment of the Circuit Court of Appeals may be deemed right.

KNAPP, BOYLE & PICKETT,
and
WHITAKER & PETICOLAS,
Attorneys for Plaintiff.

Filed July 28, 1924. D. H. Hart, Clerk, by J. N. Phillips, Deputy.

Order Allowing Writ of Error and Fixing Bond

In the District Court of the United States in and for the Western District of Texas, El Paso Division.

THE CITY OF DOUGLAS	)	
vs.	)	No. 847 Law.
FEDERAL RESERVE BANK OF DALLAS.	)	

* * *

ORDER ALLOWING WRIT OF ERROR AND FIXING WRIT OF ERROR BOND.

Upon motion of plaintiff, The City of Douglas.

IT IS ORDERED that the writ of error prayed for by it in its petition be and the same is hereby allowed, in accordance with the prayer of its petition, and the amount of the writ of error bond on said writ of error is hereby fixed at the sum of Three hundred Dollars ($300.00), pending the determination of said writ of error.

The Clerk will duly enter this order of record.

W. R. SMITH,

United States District Judge.

Filed July 28, 1924. D. H. Hart, Clerk, by J. N. Phillips, Deputy.

Writ of Error Bond

In the District Court of the United States in and for the Western District of Texas, El Paso Division.

THE CITY OF DOUGLAS	)	
vs.	)	No. 847 Law.
FEDERAL RESERVE BANK OF DALLAS.	)	

* * *

KNOW ALL MEN BY THESE PRESENTS; that we, ——————The City of Douglas, a municipal corporation, as principal, and the other subscribers hereto as sureties, are held and firmly bound unto Federal Reserve Bank of Dallas, defendant above named, in the sum of Three hundred and no-100 Dollars, ($300.00), to be paid to the said Federal Reserve Bank, it attorneys, trustees, successors or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed and dated this the 28th day of July, 1924.

WHEREAS, lately, at a term of the District Court of the United States for the Western District of Texas, El Paso Division, in a suit depending in said Court between the said The City of Douglas as plaintiff and the said Federal Reserve Bank of Dallas as defendant, numbered 847 Law on the docket of said Court judgment was rendered against the said plaintiff The City of Douglas, on the 29th day of May, 1924, and in favor of the said defendant, Federal Reserve Bank of Dallas, and that the

City of Douglas having obtained a writ of error from said court to reverse the judgment in the aforesaid suit, and a citation directed to said Federal Reserve Bank of Dallas is about to be issued, citing and admonishing it to be and appear at the United States Circuit Court of Appeals for the Fifth Circuit, to he holden at New Orleans.

NOW, the condition of the above obligation is such that if the aforesaid The City of Douglas shall prosecute its writ of error to effect and shall answer all damages and costs that may be awarded against it, if it fail to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

CITY OF DOUGLAS,
Principal,
By W. M. PETICOLAS,
Its Attorney
W. M. PETICOLAS,
Surety.
ED. M. WHITAKER,
Surety.

The Attorneys for Plaintiff are permitted to sign this bond and it is

APPROVED:

W. R. SMITH,
United States District Judge.

Filed July 28, 1924. H. H. Hart, Clerk, By J. N. Phillips, Deputy.

Writ of Error

In the District Court of the United States in and for the Western District of Texas, El Paso Division.

* * *

THE CITY OF DOUGLAS,)
Plaintiff,)
vs.) No. 847 Law.
FEDERAL RESERVE BANK)
OF DALLAS,)
Defendant.)

UNITED STATES OF AMERICA) SS.

THE PRESIDENT OF THE UNITED STATES.

To the Honorable, the Judge of the District Court of the United States for the Western District of Texas, El Paso Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States District Court, before you, or some of you, between The City of Douglas, plaintiff, and Federal Reserve Bank of Dallas, defendant, a manifest error hath happened to the great damage of the said City of Douglas as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all the things concerning the same, to the United States Circuit Court of Appeals for the Fifth Circuit, together with this writ, so that you may have the same at New Orleans, Louisiana, within thirty (30) days from the date hereof in said United States Circuit Court of Appeals, to be then and there held, and the record and proceedings aforesaid be inspected. The said United States Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WITNESS the HON. WILLIAM H. TAFT, Chief Justice of the United States, the 28 day of July, in the year of our Lord one thousand nine hundred and twenty-four.

D. H. HART,

Clerk of the United States District Court for the Western District of Texas,

(SEAL) By J. N. PHILLIPS, *Deputy.*

ALLOWED this 28 day of July, 1924.

W. R. SMITH
United States District Judge.

Issued July 28, 1924. Filed July 28, 1924. D. H. Hart, Clerk, By J. N. Phillips, Deputy Clerk.

Citation in Error

In the District Court of the United States in and for the Western District of Texas, El Paso Division.

* * *

THE CITY OF DOUGLAS, *Plaintiff,*	)	
vs.	)	No. 847 Law.
FEDERAL RESERVE BANK OF DALLAS, *Defendant.*	)	

UNITED STATES OF AMERICA) SS.
THE PRESIDENT OF THE UNITED STATES

TO FEDERAL RESERVE BANK OF DALLAS and E. B. Stroud, Jr., and Messrs. Turney, Burgess, Culwell, Holliday & Pollard, its Attorneys of record; Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for

the Fifth Circuit at New Orleans, Louisiana, within thirty (30) days from the date hereof, pursuant to a writ of error sued out and filed in the clerk's office of the District Court of the United States, in and for the Western District of Texas, in a cause wherein The City of Douglas is plaintiff, and Federal Reserve Bank of Dallas is defendant, No. 847 Law on the docket of said Court, to show cause, if any there be, why the judgment rendered against the said The City of Douglas as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the HONORABLE WILLIAM H. TAFT, Chief Justice of the United States, and the seal of said District Court this 28th day of July, in the year of our Lord one thousand, nine hundred and twenty-four.

Signed this 28th day of July, 1924.

W. R. SMITH,

United States District Judge.

(Seal)

ATTEST:

D. H. HART, Clerk,
By J. W. PHILLIPS, Deputy.

We hereby waive issuance of citation hereon and enter the appearance of Federal Reserve Bank of Dallas.

E. B. STROUD, JR.,
A. H. CULWELL,

Attorneys for Federal Reserve Bank of Dallas.

Filed July 28, 1924. D. H. HART, Clerk, by J. N. Phillips, Deputy.

Clerk's Certificate

United States of America,
Western District of Texas. SS.

I, D. H. Hart, Clerk of the United States District Court for the Western District of Texas, hereby certify that the foregoing on 175 pages is a true and correct transcript of the proceedings had and orders entered in cause No. 847 at law, styled City of Douglas vs. Federal Reserve Bank of Dallas, as the same appear on file and of record in this office, except that the original writ of error and citation in error are included herein at pages 172 and 174, respectively, besides copies thereof.

And I do further certify that the foregoing record embraces only such instruments and orders as are specified in the praecipe filed by the plaintiff in error and agreed to by the defendant in error.

Witness my official signature and the seal of said court hereto affixed in the City
(SEAL) of El Paso, Texas, this 27th day of August, A. D. 1924.

D. H. HART, *Clerk,*

By ..... *Deputy Clerk.*

J. N. PHILLIPS

IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 4424

CITY OF DOUGLAS

versus

FEDERAL RESERVE BANK OF DALLAS

ARGUMENT AND SUBMISSION—November 4, 1924

On this day this cause was called, and, after argument by Harry E. Pickett, Esq., for plaintiff in error, and A. H. Culwell, Esq., for defendant in error, was submitted to the Court.

IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 4424

CITY OF DOUGLAS, Plaintiff in Error,

versus

FEDERAL RESERVE BANK OF DALLAS, Defendant in Error

Error from the District Court of the United States for the Western District of Texas

Harry E. Pickett, Cleon T. Knapp, James P. Boyle, Ed M. Whitaker and W. M. Peticolas, for Plaintiff in Error.

E. B. Stroud, Jr., and A. H. Culwell, (E. B. Stroud, Jr., Turney, Burges, Culwell, Holliday & Pollard, on the Brief), for Defendant in Error.

Before Walker and Bryan, Circuit Judges, and Dawkins, District Judge

OPINION—Filed November 25, 1924

DAWKINS, District Judge:

For a valuable consideration the County of Cochise, State of Arizona, delivered to the plaintiff, City of Douglas, said State, a check drawn upon the Central Bank of Wilcox, Arizona, for the sum of $5,000 dated December 22, 1920, which the payee city deposited in the First National Bank of Douglas on December 24th. On the same date the latter bank forwarded the check to the Federal Reserve Bank, El Paso Branch, the proceeds upon collection to be remitted for the credit of the City of Douglas. The 25th being a holiday (Christmas) and the 26th a Sunday, the check was in the hands of the Bank at

El Paso on December 27th, and on that date it was by said bank forwarded direct to the payee bank at Wilcox for payment. The bank at Wilcox stamped it paid and transmitted in lieu thereof its own cashier's check for $6,426.17 (evidently covering, in addition, other items) drawn upon the Central Bank of Phœnix, Arizona, payable to the Federal Reserve Bank. The Reserve Bank forwarded this last mentioned check to the branch of that institution at Los Angeles, California, and it in turn sent the cashier's check direct to the Central Bank of Phœnix for payment, where it was protested for nonpayment. The practice of sending the checks direct seems to have been authorized by special ruling of the Federal Reserve Board. The Central Bank of Wilcox failed on January 8th and the Central Bank of Phœnix, likewise closed its doors on January 19th, 1921.

Thereupon, the City of Douglas sued the Federal Reserve Bank of Dallas of which the one at El Paso is a branch, setting up these facts and charging the defendant with negligence, in that, if, instead of sending the original check direct to the payee bank, it had been sent to some other agency in the Town of Wilcox, the money would have been paid because the drawer at the time had sufficient funds on deposit with the Wilcox Bank with which to meet the check; that the defendant knew the Central Banks of Wilcox and Phœnix were insolvent, but, nevertheless, thus negligently handled the matter in violation of the usual and customary rules of banking, and thereby rendered itself liable for the loss. Plaintiff accordingly prayed for judgment for the face of the check as the amount of its damages suffered through the alleged fault of the defendant.

One of the defenses specially pleaded below was that the petition disclosed no cause of action, in that there was no privity of contract between plaintiff and defendant and that the former's remedy was to sue the initial bank of deposit, the First National Bank of Douglas, Arizona. This contention having been sustained by the trial court after a hearing on the merits, plaintiff prosecutes this writ of error.

The question presented is as to whether this court shall follow what is known as the "New York" as distinguished from the "Massachusetts Rule." Under the New York Rule the depositor of a dishonored check the payment of which has failed through the fault of a transferee of the initial depositary must proceed against the said initial bank, upon the theory that there is no privity between him and the subsequent holders; while in Massachusetts, he may sue directly the bank through whose fault the loss occurred. Exchange National Bank v. Third National Bank, 112 U. S. 276; Federal Reserve Bank of Richmond vs. Malloy, 264 U. S. 160; Advance Sheet number 10, March 15, 1924.

In the latter case the Supreme Court uses this Language:

"The State decisions in respect of the liability of a correspondent bank to the owner of a check forwarded for collection by the initial bank of deposit are in conflict beyond the possibility of reconciliation. A number of States, following the 'New York Rule,' so-called, have held that there is no such direct liability; but that the initial bank alone is responsible to the owner. On the other hand, an equal,

if not greater, number of States following the 'Massachusetts Rule', have held exactly the contrary; viz., that the initial bank, by the mere fact of deposit for collection, is authorized to employ sub-agents, who thereupon become the agents of the owner, and directly responsible to him for their defaults. This Court, in Exchange Natl. Bank vs. Third Ntl. Bank, 112 U. S. 276 28 L. Ed 722, 5 Sup. Ct. Rep. 141, after reviewing the two lines of decisions, approved the 'New York Rule.' But the rule may of course be varied by contract, express *or* implied. Id. 289. Here the relations of the payee to the initial bank of deposit are controlled by the Florida statute with respect to which it must be presumed they dealt with each other. The statute had the effect of importing the 'Massachusetts Rule' into the contract, with the result that the initial bank had implied authority to intrust the collection of the check to a sub-agent, and that subagent, in turn, to another; and the risk of any default or neglect on their part rested upon the owners. 112 U. S. 281. It follows that the action was properly brought against the Richmond bank."

It appears to be conceded that the Federal Courts have followed the New York Rule, but is contended the facts of the present case take it without the rule for the reason that there was a special undertaking such as is referred to in the case last cited and in which the court declared. "But the rule may, of course, be varied by contract, express or implied," but in applying the doctrine of the Massachusetts Rule in that case, it said:

"Here the relations of the payee to the initial bank of deposit are controlled by the Florida statute with respect to which it must be presumed they dealt with each other. The statute had the effect of importing the "Massachusetts Rule" into the contract, with the result that the initial bank had implied authority to intrust the collection of the check to a sub-agent, and that sub-agent, in turn, to another; and the risk of any default or neglect on their part rested upon the owners."

Prior to this decision, the Supreme Court of Florida had adopted the New York Rule and evidently the statute which was later passed and recognized in the Malloy case was intended to change the law in that regard.

In addition to the charge of negligence, the appellant contends that because the bank book in which the deposit was made with the First National Bank of Douglas contained the provision: "All out of town items credited subject to final payment," the case is taken out of the New York Rule and governed by a special stipulation making the Massachusetts doctrine applicable. It further asserts that the Supreme Court of the United States has never held that there was not privity between the depositor and the collecting bank such as to render it liable to the owner of a check sued upon as in this case.

We shall discuss first, the contention that there was a special contract. The language quoted unquestionably gives to the receiving bank the right to charge back against the account of the depositor checks for which credit is entered, if dishonored; but can this be

construed as a limitation upon its liability for the faults of its agents so as to take the case out of the doctrine of the United States Courts? We think not. What the Bank of Douglas had in mind, and what the words in their ordinary usage mean, is that if the check is not finally paid by the drawee, it will be charged back. Nothing whatever is said about the faults of anyone or of exemption from liability therefor. In the present case the check was paid by the drawee and the effect was to discharge the drawer. Bank v. South Weymouth Bank, 184 Mass. 49; 67 N. E. 670; Milling Company v. Bank 120 Tenn. 225, 111 S. W. 248, 18 L. R. A. (new series) 441; Malloy v. Federal Reserve Bank, 281 Fed. 1005. It, (the check) has therefore never to this day been returned to the First National Bank of Douglas in order that it might be charged against the plaintiff. Actually, neither the plaintiff nor the First National Bank were parties to the check which was protested for non-payment and hence were not entitled to notice thereof. The cashier's check which was issued in favor of the branch of the Federal Bank at El Paso was drawn upon the Central Bank of Phœnix in favor of the El Paso Bank and was the consideration given in payment of the original check. Of course, having accepted it instead of the money in payment of the first check, the El Paso Bank assumed an obligation of its own, independent of the original relation, to see that the cashier's check was paid, and the money transmitted back to the First National Bank of Douglas. So that the situation as we see it is unaffected by this language in the pass book. It did not extend or enlarge the initial bank's powers in the employment of its agents for collection so as to make them sub-agents of the City of Douglas.

Returning now to the effect of the New York Rule. While it is true the case of Exchange National Bank v. Third National Bank, supra, was one in which liability was sought to be fixed against the initial bank rather than the collecting bank, yet the language of that decision, in our opinion, can be construed in no other light that as pronouncing the doctrine that there was no privity between the latter and the depositor of the check. We quote therefrom as follows:

"There is no statute or usage or special contract in this case, to qualify or vary the obligation resulting from the deposit of the drafts with the New York Bank for collection. On its receipt of the drafts, under these circumstances, an implied undertaking by it arose, to take all necessary measures to make the demands of acceptance necessary to protect the rights of the holder against previous parties to the paper * * * The general profits of the receiving bank from the business between the parties, and the accommodation to the customer, must all be considered together, and form a consideration, in the absence of any controlling facts to the contrary, so that the collection of the paper cannot be regarded as a gratuitous favor. Smedes v. Bank of Utica 20 Johns, 372, and 3 Cowen, 662; McKinster v. Bank of Utica, 9 Wend. 46; affirmed in Bank of Utica v. McKinster, 11 Wend. 473. The contract, then, becomes one to perform certain duties necessary for the collection of the paper and the pro-

tection of the holder. The bank is not merely appointed an attorney, authorized to select other agents to collect the paper. Its undertaking is to do the thing, and not merely to procure it to be done. In such case, the bank is held to agree to answer for any default in the performance of its contract; and, whether the paper is to be collected in the place where the bank is situated, or at a distance, the contract is to use the proper means to collect the paper, and the bank, by employing sub-agents to perform a part of what it has contracted to do, becomes responsible to its customer. This general principle applies to all who contract to perform a service. It is illustrated by the decision of the Court of King's Bench, in Ellis v. Turner, 8 T. R. 531, where the owners of a vessel carried goods to be delivered at a certain place, but the vessel passed it by without delivering the goods, and the vessel was sunk and the goods were lost. In a suit against the owners for the value of the goods, based on the contract, it was contended for the defendants that they were not liable for the misconduct of the master of the vessel in carrying the goods beyond the place. But the plaintiff had judgment, Lord Kenyon saying that the defendants were answerable on their contract, although the misconduct was that of their servant, and adding: 'The defendants are responsible for the acts of their servant in those things that respect his duty under them, though they are not answerable for his misconduct in those things that do not respect his duty to them.'

The distinction between the liability of one who contracts to do a thing and that of one who merely receives a delegation of authority to act for another is a fundamental one, applicable to the present case. If the agency is an undertaking to do the business, the original principal may look to the immediate contractor with himself, and is not obliged to look to inferior or distant under-contractors or sub-agents, when defaults occur injurious to his interest."

When the Supreme Court says: "The bank is not merely appointed an attorney, authorized to select other agents to collect the paper, its undertaking is to do the thing and not merely to procure it to be done. In such case, the bank is held to agree to answer for any default in the performance of its contract; and whether the paper is to be collected in the place where the bank is situated, or at a distance, the contract is to use the proper means to collect the paper, and the bank, by employing sub-agents to perform a part of what it has contracted to do, becomes responsible to its customer," it would seem clear that the conclusion was that those employed by the initial bank were not the sub-agents of the depositor, but agents of the depositary. Undoubtedly, if the subsequent transferee, or collecting bank, could be said to be the agent of the owner in these circumstances, it must necessarily arise from the authority, express or implied, from the owner to the initial bank to make such employment. As is stated at other places in the opinion quoted from, the owner of a check, when depositing it for collection, does not know the channels through which the bank may send it and certainly there is no direct legal tie between him and anyone else to whom it may be transmitted. The contract is between the first bank and the one to whom it is sent for collection

and for the violation of which, through negligence or otherwise, the transferee is liable to the transferror. In those cases where it is held that the owner of the check may pursue directly the collecting bank, it is upon the theory of implied authority in the initial bank to make the employment for the benefit of the owner and as to which the collector is held to assent. Under this rule the initial bank is only accountable for negligence in selecting a responsible and faithful agent for the owner and cannot be held liable for the subsequent faults of the collecting agent in which it had no part or reasonable ground to anticipate would be committed. In other words, there is apparent inconsistency in the idea that both the initial and collecting banks, or either of them, at the choice of the owner, can be held liable in these circumstances. None of the elements necessary to a solidary obligation exists. The matter, therefore, must be governed by the effect of the contract and when it is determined, as the Federal Courts have decided, that the initial bank undertakes, in the absence of express or implied understanding otherwise to collect the check and to be, itself, responsible to the owner for the fault of its own agents, there arises no relation between the owner and the collecting bank out of which a right of action for failure to perform can be maintained.

Our conclusion is that the ruling of the lower court upon the special defense is sustained by the law applicable thereto.

In its brief plaintiff urges upon us the contention that the El Paso Bank having accepted the check of the Wilcox Bank upon the Phœnix Bank, instead of money, and the original check having thereby been paid, the defendant became liable to it as a debtor for funds had and received. However, this suit rests entirely upon a demand for damages for violation of a contract, and a careful reading of the petition will not disclose the slightest suggestion of a right based upon assumpsit. Of course, the two causes of action are entirely distinct, and we are not permitted to treat the petition as one in assumpsit even though a right of action might exist upon that score, as to which we express no opinion.

For the reasons assigned, the judgment of the lower court is affirmed.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

JUDGMENT—November 25, 1924

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause, be, and the same is hereby, affirmed;

It is further ordered and adjudged that the plaintiff in error, City of Douglas, and the sureties on the writ of error bond herein, W. M.

Peticolas and Ed M. Whitaker, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed January 12, 1925

City of Douglas, of Douglas, Arizona, plaintiff in error, in the above entitled cause, respectfully shows:

I

That this action was a suit of a civil nature, arising under the laws of the United States, and especially under a certain Act of Congress known as The Federal Reserve Act, in that the defendant in error is and was a corporation organized and doing business under that Act and the plaintiff in error sought to enforce against defendant in error a liability incurred, or alleged to have been incurred in the course of its operation under the above mentioned act of Congress and the regulations of the Federal Reserve Board, made in pursuance thereof, and said defendant in error sought to avoid any such liability, or any liability at all, by reason of its operation under said Act of Congress and said regulations made in pursuance thereof and the provisions of the same all and singular, and the jurisdiction of the United States District Court was invoked upon and by reason of such matters and things aforesaid.

II

The amount in controversy, exclusive of interest and costs exceeds the sum or value of One Thousand Dollars, that is to say, the amount in controversy is the sum of Five Thousand Dollars, with interest thereon and costs, which said sum and sums plaintiff in error in this action sought to recover of and from the defendant in error, but the United States District Court for the Western District of Texas at El Paso did render its judgment in favor of the defendant in error and against the plaintiff in error, which judgment was affirmed by the United States Circuit Court of Appeals for the Fifth Judicial Circuit on or about the 25th day of November, 1924.

III

The said judgment is one in which the decision of the Circuit Court of Appeals is not made final by the laws of the United States and plaintiff in error, City of Douglas of Douglas, Arizona, desires to have the decision and judgment in said cause reviewed by the Supreme Court of the United States because of the errors more particularly assigned and pointed out in the Assignment of Errors presented and filed with this Petition, to which reference is hereby made.

Wherefore City of Douglas of Douglas, Arizona, plaintiff in error, respectfully prays that a Writ of Error be allowed to it in this cause, directing the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit to send the records and proceedings in this cause with all things concerning the same to the Supreme Court of the United States, in order that the errors complained of in the Assignment of Errors herewith filed by the plaintiff in error may be reviewed, and if error be found, corrected, according to the laws and customs of the United States and your Orator, City of Douglas of [fol. 191] Douglas, Arizona, will ever pray etc.

City of Douglas, of Douglas, Arizona, Plaintiff in Error, by (Signed) Harry E. Pickett, of Douglas, Arizona; by (Signed) Cleon T. Knapp, of Bisbee, Arizona; by (Signed) James P. Boyle, of Douglas, Arizona, Attorneys for Plaintiff in Error.

Sworn to by Harry E. Pickett. Jurat omitted in printing.

In United States Circuit Court of Appeals

[Title omitted]

Order Allowing Writ of Error—Filed January 12th, 1925

The foregoing Petition for Writ of Error is granted and a Writ of Error allowed as prayed for, upon plaintiff in error giving bond according to law in the sum of Two Thousand Dollars.

It is further ordered that the record to be transmitted in this case shall be the same as the record upon which this case was heard in the Circuit Court of Appeals for the Fifth Judicial Circuit, together with the transcript of all proceedings had and taken in the said case in the said Circuit Court of Appeals and subsequent thereto, including the opinion of the said Circuit Court of Appeals. The Clerk of the said Circuit Court of Appeals shall transmit to the Clerk of the Supreme Court of the United States a transcript of the record made up as above stated.

Dated this 12th day of January, 1925.

(Signed) R. W. Walker, Judge of the United States Circuit Court of Appeals for the Fifth Circuit.

In United States Circuit Court of Appeals

[Title omitted]

Assignment of Errors—Filed January 12, 1925

Comes now City of Douglas of Douglas, Arizona, plaintiff in error in the above entitled cause, for the purpose of making application for a Writ of Error to the Supreme Court of the United States and files the following assignment of errors to the opinion and judgment of the United States Circuit Court of Appeals for the Fifth Judicial Circuit, delivered and rendered on or about November 25, 1924, upon which Assignment of Errors it expects to rely in the prosecution of a Writ of Error to the Supreme Court of the United States in said cause.

I

The Circuit Court of Appeals erred in affirming the judgment entered by the District Court of the United States for the Western District of Texas at El Paso and in not reversing said judgment, for the reason that it appeared by the uncontroverted evidence that privity of contract existed between plaintiff in error and defendant in error, by virtue of a certain provision expressed upon the pass-book in evidence, to-wit: "Out of town items taken subject to final payment," which constituted the material part of the contract the subject matter of this action, whereby defendant in error became and was constituted the agent for collection of plaintiff in error, liable to it for its tortious acts, thus excepting the transaction, the subject matter of this action, from the operation of the so-called "New York Rule" and rendering such transaction subject rather to and governed by the so-called "Massachusetts Rule", applicable in like situations, for by reason of such provision upon the pass-book aforesaid its substance and its legal effect, it was within the contemplation of the parties that the check in controversy should be taken by the initial bank in the chain of collection and transmitted in the usual course to another bank or banks for actual collection, that credit was given only subject to such collection being made and it was therefore clearly the contract between the parties that such initial bank should forward the check to the forwardee bank for collection, which forwardee or ultimate collecting bank should become and did become the agent of plaintiff in error for the purpose of collection, and that the initial bank in the chain of collection should only be liable for failure upon its part to exercise due care in the selection of a competent collecting bank.

Wherefore, because of the said errors, City of Douglas of Douglas, Arizona, plaintiff in error, prays that the order and judgment of the said Circuit Court of Appeals and the District Court of the United States for the Western District of Texas at El Paso may be reviewed by the Supreme Court of the United States and reversed and judg-

ment entered in favor of the plaintiff in error and against defendant in error.

City of Douglas, of Douglas, Arizona, by (Signed) Harry E. Pickett, of Douglas, Arizona; by (Signed) Cleon T. Knapp, of Bisbee, Arizona; by (Signed) James P. Boyle, of Douglas, Arizona, Attorneys for Plaintiff in Error

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Bond on Writ of Error for $2,000—Approved and filed Jan. 12, 1925; omitted in printing

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In United States Circuit Court of Appeals

[Title omitted]

Stipulation re Transcript of Record—Filed Jan. 15, 1925

It is hereby stipulated and agreed by and between City of Douglas, of Douglas, Arizona, plaintiff in error, by Harry E. Pickett, Cleon T. Knapp and James P. Boyle, its counsel, and Federal Reserve Bank of Dallas, defendant in error, by A. H. Culwell and E. B. Stroud, Jr., its counsel, that the following portions of the record in the above entitled cause shall constitute the transcript of the record on Writ of Error from the Supreme Court of the United States to the United States Circuit Court of Appeals for the Fifth Judicial Circuit, and that the Clerk of that Court shall transmit only the papers designated herein to the Clerk of the Supreme Court of the United States as a return to the Writ of Error.

A. Transcript of the record as printed in the United States Circuit Court of Appeals for the Fifth Circuit, containing:

1. Plaintiff's amended petition.
2. Defendant's first amended answer.
3. Exhibit "A" to amended answer.
4. Judgment.
5. Findings of Fact, Conclusions of Law and Opinion filed by the District Court of the United States for the Western District of Texas at El Paso.
6. Bill of Exceptions taken by the City of Douglas.
7. Exceptions taken by City of Douglas, plaintiff in error, to Findings of Fact and Conclusions of Law in United States District Court for the Western District of Texas, El Paso Division.
8. Memorandum of date of petition for Writ of Error from United States Circuit Court of Appeals for the Fifth Circuit to the District Court of the United States for the Western District of Texas, El Paso Division.
9. Memorandum of date of Order allowing such Writ of Error.
10. Memorandum of date of Writ of Error.

11. Memorandum of the date, penalty and names of obligors and condition of Bond on Writ of Error, given upon taking out the Writ of Error from the United States Circuit Court of Appeals for the Fifth Circuit to the District Court of the United States for the Western District of Texas, El Paso Division.

12. Memorandum of date of citation and date of waiver of service.

13. Certificate of the Clerk of the United States District Court for the Western District of Texas, El Paso Division.

B. Opinion filed by the United States Circuit Court of Appeals for the Fifth Judicial Circuit, dated November 25, 1924.

C. Order and Judgment entered thereon, or either, as the case may be.

D. All proceedings had in the cause in the United States Circuit Court of Appeals for the Fifth Judicial Circuit.

E. Petition for Writ of Error to United States Circuit Court of Appeals for the Fifth Circuit and order allowing Writ.

F. Assignment of Errors upon Writ of Error to United States Circuit Court of Appeals for the Fifth Judicial Circuit.

G. Writ of Error taken to the United States Circuit Court of Appeals for the Fifth Judicial Circuit.

H. Bond on Writ of Error taken to the United States Circuit Court of Appeals for the Fifth Judicial Circuit.

I. This Stipulation for making up the record to the Supreme Court of the United States.

J. Citation upon Writ of Error taken to United States Circuit Court of Appeals for the Fifth Judicial Circuit, with acknowledgment of service.

Witness our hands this 7th day of January, 1925.

(Signed) Harry E. Pickett, of Douglas; Cleon T. Knapp, of Bisbee; James P. Boyle, of Douglas, Attorneys for City of Douglas, Plaintiff in Error. A. H. Culwell, of El Paso, Texas; E. B. Stroud, Jr., of Dallas, Texas, Attorneys for Defendant in Error.

IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 177 to 199 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 4424, wherein the City of Douglas is plaintiff in error and the Federal Reserve Bank of Dallas is defendant in error, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 176 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 20th day of January, A. D. 1925.

Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

WRIT OF ERROR—Filed Jan. 12, 1925

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable Judges of the United States Circuit Court of Appeals for the Fifth Judicial Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court of Appeals before you, or some of you, between City of Douglas of Douglas, Arizona, plaintiff in error, and the Federal Reserve Bank of Dallas, defendant in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this Writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof. That the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, this 12th day of January, in the year of our Lord, One Thousand Nine Hundred and Twenty-five.

Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Allowed by R. W. Walker, Judge of Circuit Court of Appeals for the Fifth Circuit.

I hereby certify that a true copy of the within Writ has this day been lodged in the Clerk's Office for the use of the defendant in error.

Dated 12th day of January, A. D. 1925.

Frank H. Mortimer, Clerk.

[File endorsement omitted.]

CITATION—In usual form, showing service on E. B. Stroud, Jr., et al.; omitted in printing

Endorsed on cover: File No. 30,872. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 279. City of Douglas, plaintiff in error, vs. Federal Reserve Bank of Dallas. Filed February 16th, 1925. File No. 30,872.

Office Supreme Court, U. S.
FILED
JUL 14 1925
WM. R. STANSBURY
CLERK

BRIEF FOR PLAINTIFF IN ERROR

Supreme Court of the United States

CITY OF DOUGLAS, a Municipal Corporation,

versus

FEDERAL RESERVE BANK OF DALLAS, Defendant in Error.

No. 279.
October Term, 1925

In Error to the United States Circuit Court of Appeals for the Fifth Circuit.

CLEON T. KNAPP,
JAMES P. BOYLE,
HARRY E. PICKETT,
Of Douglas, Arizona,
Attorneys for Plaintiff in Error.

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Supreme Court of the United States

CITY OF DOUGLAS, a Municipal Corporation,
Plaintiff in Error,
versus
FEDERAL RESERVE BANK OF DALLAS,
Defendant in Error.

No. 279.
October Term, 1925

BRIEF FOR PLAINTIFF IN ERROR

STATEMENT OF THE CASE

(Opinions of case in lower courts: 300 Fed. 573; 2 Fed. 2nd. Series, 818).

This is a civil action, upon writ of error to the Circuit Court of Appeals for the Fifth Circuit, which affirmed the judgment of the United States District Court for the Western District of Texas in favor of defendant in error in an action brought by plaintiff in error to recover the value of a check in the sum of $5,000.00, alleged to have been lost

to it by the negligence of defendant in error, the collecting bank.

The County of Cochise about Dec. 22, 1920, issued and delivered to plaintiff in error its check in the sum of $5,000.00 (Transcript pp. 1, 2, 35-53). The check was drawn upon the Central Bank of Willcox, Arizona, and on Dec. 24, 1920, plaintiff in error, payee, deposited the same in the First National Bank of Douglas, Arizona, it is alleged, **for collection.** The said initial bank was a member of the Federal Reserve System (Tr. 2-3, 44) and, it is alleged, undertook to transmit the check in the usual course, for collection.

The pass book of plaintiff in error, in use for many years prior to this transaction, and in which the transaction was entered in the usual course, contained upon its face these words:

"OUT OF TOWN ITEMS CREDITED SUBJECT TO FINAL PAYMENT" (tr. 44, 157).

On the same day, Dec. 24, 1920, the initial bank forwarded the item to the El Paso Branch of the Federal Reserve Bank of Dallas, defendant in error, Dec. 25th, being Christmas Day, and Dec. 26th, being Sunday, the item reached the Branch Federal Reserve Bank on Dec. 27, 1920 (tr. 40-41). The Branch Federal Reserve Bank forwarded the item **direct to the drawee bank** at

Willcox, where it was received Dec. 30, 1920, where and when the County of Cochise, drawer, had sufficient funds upon deposit to pay the check. The drawee bank thereupon debited the account of the drawer with the amount of the check, to-wit, $5,000.00, stamped the check "PAID" and returned it to the drawer, issuing and transmitting to the Branch Federal Reserve Bank at El Paso, in lieu of cash or its equivalent, a certain check or draft of the drawee bank, drawn upon the Central Bank of Phoenix, at Phoenix, Arizona (tr. 3). The last mentioned check or draft was worthless, but was received in payment of the item forwarded (tr. 3-34) by the Branch Federal Reserve Bank, and about Jan. 8, 1921, was protested at Phoenix (tr. 4, 94), (Italics ours).

At these times, both the Central Bank of Willcox and the Central Bank of Phoenix were insolvent or had been in a failing condition for some time, which facts the Branch Federal Reserve Bank either knew or stood charged with such knowledge, and between Jan. 8th and March 19th, 1921, both banks closed their doors and formally failed (tr. 4, 5, 77-90, 73).

Plaintiff in error brought its action against defendant in error to recover the amount of the check in question. The cause was tried to the Court without a jury. The

principal defense interposed was that no privity existed between the owner of the paper and the collecting bank and that hence. plaintiff in error could not maintain the action. This defense the trial Court sustained (tr. 156-161), entered judgment in favor of defendant in error, and the judgment was affirmed by the Circuit Court of Appeals.

SPECIFICATION OF ERRORS

I.

"The Circuit Court of Appeals erred in affirming the judgment entered by the District Court of the United States for the Western District of Texas at El Paso and in not reversing said judgment, for the reason that it appeared by the uncontroverted evidence that privity of contract existed between plaintiff in error and defendant in error, by virtue of a certain provision expressed upon the pass-book in evidence, to-wit: "Out of town items credited subject to final payment," which constituted the material part of the contract the subject matter of this action, whereby defendant in error became and was constituted the agent for collection of plaintiff in error, liable to it for its tortious acts, thus excepting the transaction, the subject matter of this action, from the operation of the so-called "New York Rule" and rendering such transactions subject to

and governed by the so-called "Massachusetts Rule," applicable in like situations, for by reason of such provision upon the pass-book aforesaid, its substance and its legal effect, it was within the contemplation of the parties that the check in controversy should be taken by the initial bank in the chain of collection and transmitted in the usual course to another bank or banks for actual collection, that credit was given only subject to such collection being made and it was therefore clearly the contract between the parties that such initial bank should forward the check to the forwardee bank for collection, which forwardee or ultimate collecting bank should become and did become the agent of plaintiff in error for the purposes of collection, and that the initial bank in the chain of collection should only be liable for failure upon its part to exercise due care in the selection of a competent collecting bank." (Tr. 185).

ARGUMENT

The trial Court rested its judgment upon the single proposition, that in the present case, no privity existed between the owner of the paper and the ultimate or collecting bank, hence, the action could not be maintained, (tr. 156-161 City of Douglas vs. Federal Reserve Bank of Dallas, 300 Fed. 573).

This finding and judgment the Circuit Court of Appeals affirmed.

> City of Douglas vs. Federal Reserve Bank of Dallas, 2 Fed. 2nd. Series, 818.

Both Courts held that under the opinions in two former decisions of this Court, the so-called "New York Rule" governing the liability of banks in the chain of collection to the owner of paper applied to the situation in this case, and not the so-called "Massachusetts Rule," relying upon:

> Exchange National Bank vs. Third National Bank, 112 U. S. 276, and, Federal Reserve Bank vs. Malloy, 264 U. S. 160.

We feel, however, and earnestly submit that the precise situation exhibited by the present case differentiates it from the rule announced in the Exchange Bank case, that its facts distinguish it, and that it constitutes as clear an exception to that case and its rule as did the particular facts constituting the situation in the Malloy case, which this Court recognized and announced in its opinion in the latter case.

The Exchange Bank case adopts as the rule of decision in this Court, the so-called "New York Rule" in like cases. This we concede. This Court in the late Malloy case reaffirms

this holding where the situation generally arises, but in that case held a clear exception to exist upon its facts and affirmed a recovery in favor of the owner of the paper as against the ultimate collecting bank.

> Federal Reserve Bank vs Malloy, 264 U. S. 160.

We submit that in the Exchange Bank case, the Court holds nothing more than that where it appears that there is merely a delivery to an initial bank in the ordinary course of business of paper payable elsewhere, nothing else appearing but the fact of deposit and there being no other evidence as to any contract, express or implied, as to what degree of responsibility the initial bank assumes, that the contract so made is one whereby the initial bank undertakes upon its part the whole matter of actual collection and is therefore answerable for any default upon the part of any bank subsequent to it in the chain of collection.

The Court expressly states that if other facts appear which establish it that the parties had in mind something further, so that the contract that would actually result was not merely that which the law makes upon the mere fact of deposit or delivery, but one either express or implied whereby the initial bank restricted its liability, contemplating

that such deposit or delivery was only for collection, then, such a case constitutes an exception from the application of the so-called "New York Rule," to the extent that such latter bank is not liable for the default of the ultimate collecting bank, but that such latter bank is also an agent for the owner of the paper in the process of collection, any privity exists between them.

> Exchange National Bank vs. Third National Bank, 112 U. S.. 276 (Mr. Justice Blatchford).
>
> "From the facts found it is to be inferred that the New York Bank took the draft from the plaintiff as a customer in the usual course of business. The contract then becomes one to perform certain duties necessary for the collection of paper and the protection of the holder. The Bank is not merely appointed an attorney authorized to select other agents to collect the paper. Its undertaking is to do the thing and not merely to procure it to be done. The distinction between the liability of one who contracts to do a thing and that of one who merely receives a delegation of authority to act for another, is a fundamental one applicable to the present case. If the agency is an undertaking to do the business the original principal may look to the immediate contractor with himself and is not

obliged to look to inferior or distant under-contractors or subagents when defaults occur injurious to his interests."

"And while the rule of law is this generally, the liability of the bank may be varied by consent, or the bank may refuse to undertake the collection. It may agree to receive the paper only for transmission to its correspondent and thus make a different contract and become responsible only for good faith and due discretion in the choice of an agent. If this is not done or there is no implied undertaking to that effect, the same responsibility is assumed in undertaking to collect foreign paper and in fact to collect paper at home. On any other rule no particular contractor would be liable for the default of his own agent when from the nature of the business it was evident he must employ subagents. The distinction occurs between the rule of merely personal representative agency and the responsibility imposed by the law of commercial contracts. This solves the difficulty and reconciles the apparent conflict of decision in many cases. **The nature of the contract is the test.** If the contract be only for the immediate service of the agent and for his faithful conduct as representing the principal, the responsibility ceases with the

> limits of the personal service and undertaken." (Italics ours).

In Federal Reserve Bank vs Malloy, 264 U. S. 160, the Court (Mr. Justice Sutherland) while stating that the "New York Rule" is that recognized in this Court, concedes:

> "But the rule may, of course, be varied by contract express or implied."

And in that case, the Court held that even though the "New York Rule" was the rule of decision ordinarily, that the situation had been altered by an implied contract that resulted from the existence of a statute in the jurisdiction within which the initial bank was situate, which statute crystalized into enactment the "Massachusetts Rule," whereby the parties were held to have entered into their transaction with this in mind, so that the implied contract resulted between them to the effect that the initial bank did not assume liability for the default of banks subsequent to it in the chain of collection, and that the ultimate collecting bank committing acts of negligence producing the loss of the paper became and was liable to the owner or depositor, and the necessary privity existed between them.

The Florida Statute in question, being Laws of Florida 1909, Chap. 5921, p. 146, provided:

> "That when a check, draft or other negotiable instrument is deposited in a bank for credit, or for collection, it shall be considered due diligence on the part of the bank in the collection of any check, draft, note or other negotiable instrument so deposited, to forward en route the same without delay in the usual commercial way in use according to the regular course of business of banks, and that the maker, indorser, guarantor, or surety of any check, draft, note or other negotiable instrument so deposited, shall be liable to the bank until actual final payment has been received, and that when a bank receives for collection any check, draft, note or other negotiable instrument, and forwards the same for collection, as herein provided, it shall only be liable after actual final payment is received by it, except in case of want of due diligence on its part as aforesaid."

This Court further said:

> "Here the relations of the payee to the initial bank of deposit are controlled by the Florida Statute with respect to which it must be presumed they dealt with each other. This Statute had the effect of importing the "Massachusetts Rule" into the contract, with authority to entrust the collection of the check to a subagent, and that subagent in turn, to another;

> and the risk of any default on their
> S. 281. It follows that the action was properly brought against the Richmond bank."

As we have seen, the pass book which evidenced the transaction in the present case, provided upon its face, that:

"OUT OF TOWN ITEMS CREDITED SUBJECT TO FINAL PAYMENT."

This language imports reasonably, that there shall be no responsibility upon the initial bank until final payment, which means obviously the initial bank shall not be liable until it is PAID, and that if for any reason, for default of subsequent banks in the chain of collection or for any other reason, it does not receive final payment, it shall not be liable to the depositor. It contemplates, we think fairly, that ordinary process of collection with respect to foreign or out of town items shall be resorted to, and other banks made use of in the process of collection, for the subject matter of the provision is "out of town items," and it is stated that the same shall only be credited subject to final payment. So that if, for any reason, final payment is not received, any such item may be charged back and the initial bank it follows, is not liable for the

same. It does not matter for what reason it fails to receive final payment, if this is due to the default of subsequent banks, as pointed out, such cases are included within the scope of the provision and the initial bank is not liable, and this situation, we feel, the learned Circuit Court of Appeals did not consider in arriving at its conclusion.

(Italics ours).

We have only been able to find a single adjudication in point with the situation in the present case. The same situation was before the Supreme Court of Kentucky in a case just as this, where the deposit slip evidencing the transaction between the initial bank and depositor contained the provision:

"ALL ITEMS CREDITED SUBJECT TO FINAL PAYMENT."

The initial bank was sued for default of a bank subsequent to it in the chain of collection, and the Supreme Court affirmed a judgment of the lower Court in favor of the defendant initial bank.

Falls City Woolen Mills vs. Banking Company, 145 Ky. 64 140 S. W. 66.

The Minnesota court holds such a provision to amount to a contract limiting the liability of the initial bank to the extent we have discussed.

Minneapolis Sash & Door Co. vs. Bank, 76 Minn. 136 78 N. W. 930.

In an analogous situation, the Circuit Court of Appeals for the Eighth Circuit reaches a similar conclusion.

California National Bank vs. Utah National Bank, 190 Fed. 318.

Indiana is a jurisdiction in which the "New York Rule" obtains (Express Co. vs. Haire, 21 Ind. 4; Tyson vs. Bank, 6 Blackf. 225), and the Indiana Court in a like situation holds:

Downey vs. Bank, 52 Ind. App. 672 96 N. E. 403.

"Where the endorsement shows that it is endorsed for collection, or where there is a definite understanding that such is the purpose of the parties, there is no question that the title to the paper does not pass, or where the check is deposited as a check **and the memorandum of deposit so shows,** there should be no question that the relation of debtor and creditor does not arise and the check remains the property of the depositor and the bank holds it as his agent for collection. Where, however, there is no specific agreement or understanding at the time a check is deposited, as to how it is to be treated, and the bank gives the depositor credit for the check as so much cash,

> the question arises whether the title passes to the bank or whether it remains in the depositor and the bank holds it for collection. Upon this question the authorities are not without conflict. According to the weight of authority, where it appears that the check bearing an endorsement not indicating that it was endorsed for collection, is passed to the credit of the depositor as cash and **nothing further appears,** the presumption arises that the transaction constitutes the sale of the check to the bank. **This presumption is not conclusive and may be rebutted by facts or circumstances showing a contrary intention."**
>
> (Italics ours).

We earnestly submit that the provision upon the pass book in the present case is exactly of the same legal effect between the parties here, and gives rise to exactly the same contract that resulted from the existence of the Florida statute considered in the Malloy case and that the Florida statute is not wider in its scope than this provision; that both have the effect of importing the "Massachusetts Rule" into situation between the parties, and that this case, as well as the Malloy case, constitutes an exception to the operation of the "New York Rule;" that the contract here is one for collection at a place other than the place

of deposit or delivery, necessarily therefore, contemplating the resort to other agencies of collection, and that this case is that considered by this Court in:

> Bank of Washington vs. Triplett, 1 Pet. 25 (Opinion by Marshall, C. J.)

rather than that of Exchange National Bank vs. Third National Bank, 112 U. S. 276.

It is clear that the provision on the pass book is sufficient to and does give rise to and constitute a contract between the parties. This Court has held in:

> Missouri Pac. R. Co. vs. Prude, 265 U. S. 99 (Mr. Justice McReynolds).

That where on the face of a railroad ticket a provision appeared as follows:

> "In selling this ticket and checking baggage thereon, the selling carrier acts only as agent and is not responsible beyond its own lines."

And the passenger was done injury at the hands of an employee of a connecting line, that the initial carrier was not responsible. The Court said:

> "Acceptance and use of the ticket suffices to establish an agreement prima facie valid, which limited the selling carriers liability. Mere failure of the passenger to read matter plainly placed before her cannot overcome the presumption of assent."

A provision being otherwise valid for that purpose operates to produce a contract whether such provision be upon a railroad ticket, theatre ticket, baggage check, pass book or deposit slip.

We respectfully submit that the judgment of the Circuit Court of Appeals should be reversed.

Respectfully submitted,

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JAMES P. BOYLE,
HARRY E. PICKETT,

Attorneys for Plaintiff in Error.

MAR 1 1926
WM. R. STANSBU
CL

REPLY BRIEF FOR PLAINTIFF IN ERROR

Supreme Court of the United States

CITY OF DOUGLAS, a Municipal Corporation,

versus

FEDERAL RESERVE BANK OF DALLAS, Defendant in Error.

No. 279. October Term, 1925

In Error to the United States Circuit Court of Appeals for the Fifth Circuit.

CLEON T. KNAPP,
JAMES P. BOYLE,
HARRY E. PICKETT,
Of Douglas, Arizona,
Attorneys for Plaintiff in Error.

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Supreme Court of the United States

CITY OF DOUGLAS, a Municipal Corporation,
Plaintiff in Error,

versus

FEDERAL RESERVE BANK OF DALLAS,
Defendant in Error.

No. 279
October Term, 1925

REPLY BRIEF FOR PLAINTIFF IN ERROR

ANSWER TO CONTENTION OF DEFENDANT IN ERROR THAT THE PROVISION UPON THE PASS BOOK "ALL OUT OF TOWN ITEMS CREDITED SUBJECT TO FINAL PAYMENT" WAS INEFFECTIVE TO ALTER THE SITUATION BETWEEN THE PARTIES EXISTING IN ITS ABSENCE.

Defendant in Error vigorously contends that the provision in question is meaningless, in so far as it may be relied upon to vary the rights and obligations of the parties as the

same exist in the law, in the absence of such provision. In this we cannot acquiesce, for it seems to us entirely reasonable, that the parties would not have deliberately made the same a part of their transaction merely to further restate a relationship that already existed between them in its absence.

That the effect of such provision is to alter the situation of the parties to the extent contended by plaintiff in error, is expressly held in the only adjudicated cause in which the same has ever been passed upon by a court of last resort.

> Falls City Woolen Mills, vs. Banking Company, 145 Ky. 64; 140 S. W. 66.

This decision, we are justified in assuming, is known in the commercial field of banking, and well may account for the appearance of such provision upon pass books and deposit slips utilized in handling checks drawn upon out of town banks, and banks and their customers in such transactions may have been relying upon the effect of this decision for years.

We submit, that it is neither tortuous nor strained to attribute to it the effect given it by the Kentucky Court, and here contended for by plaintiff in error; and that it reasonably has the effect of bringing into the contemplation of the parties when entering into their transaction, the fact that intermediate agencies are to be employed in realizing the proceeds of the paper in the usual course of collection, and if so, in any given case, the

authorities concede that the reason giving rise to the "New York Rule" does not exist and such rule of decision does not apply.

THE SUPREME COURT OF ARIZONA HAS PASSED UPON THIS VERY TRANSACTION IN A CONTEMPORARY ACTION BROUGHT BY PLAINTFF IN ERROR AGAINST THE INITIAL BANK, THE FIRST NATIONAL BANK OF DOUGLAS, AND HELD THAT THE "MASSACHUSETT RULE" IS THE LAW WITHIN THE STATE OF ARIZONA, IN WHICH STATE THE PARTIES ENTERED INTO THEIR CONTRACT, AND THAT THERE CAN BE NO RECOVERY BY PLAINTIFF IN ERROR AS AGAINST SAID INITIAL BANK.

And, now we come to this question of vital consequence in this and all similar causes that may hereafter arise.

The District Court and the Circuit Court of Appeals have held that there is no recovery in this case in favor of the owner of the paper as against the ultimate collecting bank. 300 Fed. 573; 2 Fed. 2nd. Series, 818.

The Supreme Court of the State of Arizona has, since the decision of the Circuit Court of Appeals, and during the progress of this writ of error, had this very transaction before it, in the contemporary action brought by plaintiff in error here, against the initial bank, to wit, the First National Bank of Douglas, Arizona, and has squarely decided that there can be no recovery upon this transaction in favor of plaintiff in error as

against said initial bank, and has announced that the "Massachusetts Rule" is the law within the State of Arizona, and not the "New York Rule."

> City of Douglas, vs. First National Bank, No. 2373, opinion dated Oct. 9, 1925, —— Arizona ——, 239 Pac. 785.

The Court says:

> "We are of the opinion that, notwithstanding the very high authority which supports the so-called New York Rule, the Massachusetts doctrine is more consonant with sound reason and the fundamental principles of commercial law, and that, in the absence of a special agreement to the contrary, a bank which receives a check or draft on an out of town institution for collection is responsible only for reasonable diligence in selecting the proper agent to which is shall be sent for that purpose, and transmitting the paper with proper instructions, and that the actual collecting institution is the agent, not of the forwarding bank, but of the payee of the instrument."

So that we have plaintiff in error in this anomalous situation—by reason of the accident of a diversity of opinion in separate jurisdictions, the owner of paper who has lost the same through acts of the tort feasor, is deprived of all remedy, although undoubted right exists in the owner. In this case,

there can be no recovery as against the initial bank since in Arizona, the "Massachusetts Rule" obtains, and there can be no recovery as against the ultimate collecting bank, the actual tort feasor, because in the Federal jurisdictions, the "New York Rule" obtains.

A RIGHT WITHOUT A REMEDY.

We do not believe that this Court should fairly sustain a situation before it that will produce this harsh result, visiting entire loss upon the innocent owner of paper and absolving the actual tort feasor by mere accident of diversity of judicial opinion in separate jurisdictions to which the litigant is compelled to resort.

Wherever such injustice will result from such a situation, even a case involving commercial law, a Federal Court has been held to have the right to apply the law of the State, in case of such actual conflict that would result in a double recovery.

> Sontisby vs. Keeley, 7 Fed. 447; 2 McCreary, 103.

The Court said:

> "A decision which would establish injustice such as this, is not, I am sure, required at my hands. It is true that this case does not belong to the class in which, as a rule, the Federal courts are required to follow the decisions of the highest judicial tribunal of the state. But, although the question is a new one, I am clearly of the opinion

that, even on questions purely of commercial law, the Federal courts should follow those decisions if it appears that, by reason of the situation of the parties and of the subject matter, to hold otherwise would subject a party to double payment of the same debt, without the possibility of relief from the Federal courts."

And upon the same principle, this Court certainly has the same right, when to hold otherwise will deny all remedy where the right nevertheless exists.

Respectfully submitted,

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FILED
JAN 26 1926
WM. R. STANSBU
CLE

IN THE

Supreme Court of the United States

CITY OF DOUGLAS,
Plaintiff in Error,

vs.

FEDERAL RESERVE BANK OF DALLAS
Defendant in Error.

No. 279
October Term
1925

BRIEF FOR DEFENDANT IN ERROR

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No. 279
October Term
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BRIEF FOR DEFENDANT IN ERROR

STATEMENT OF THE CASE

The statement of the case as made in brief for plaintiff in error, is thought to be rather inaccurate, in that it is there averred that the check in question was deposited in the First National Bank of Douglas, Arizona, for collection; for as a fact, this check was, on December 24, 1920, duly endorsed and deposited in said bank as a cash item. The amount thereof was entered by the bank as a credit in the city's deposit (R. 40, 44) and on this deposit book was printed an endorsement as follows: "All out of town items credited subject to final payment". There was no other contract or agreement between the City of Douglas and the First National Bank of Douglas at the time of the deposit

of said check (R. 156, 158) and the cause is here submitted upon one specification of error, which is to the effect that, by reason of the above recital on the pass book, a special contract was made between the depositor and the bank which took the transaction out of the general rule recognized in this Court and which special contract made the defendant in error the agent of plaintiff in error in the handling of the item. To this contention we present the following:

FIRST COUNTER PROPOSITION:

Where a depositor duly endorses and deposits in bank a check, immediate credit therefor being given by the bank, title to the check is vested in and same becomes the property of the bank, and the relationship of debtor and creditor is established between the depositor and the bank.

SECOND COUNTER PROPOSITION:

The recital on depositor's pass book to the effect "All out of town items credited subject to final payment" did not vary the legal effect of the transaction nor impose a different contract than was imposed under the law, as endorsement of the check by the depositor made depositor liable to the bank in the event no final payment was received by the bank on the check.

THIRD COUNTER PROPOSITION:

A bank receiving from its customer a check drawn on a bank in a different locality is liable for any neglect of duty occurring in its collection, whether arising from the default of its own officers or from that of its correspondent.

FOURTH COUNTER PROPOSITION:

The plaintiff in error having deposited the check in question in the First National Bank of Douglas, had not a right of action against the defendant in error for any miscarriage or failure to collect, because there was no privity of contract between such depositor and the defendant herein.

FIFTH COUNTER PROPOSITION:

A bank receiving a check from its customer for collection becomes an independent contractor, and subsequent banks in the chain are its agents, and not the agents of the owner of the check.

BRIEF OF ARGUMENT

As stated by plaintiff in error, the judgment of the trial court was rested upon the proposition that there was no privity between the depositor and the ultimate or collecting bank, and hence no right of action by the depositor against the ultimate bank, 300 Fed. 573, and

this view was sustained by the Circuit Court of Appeals, 2 Fed., (2nd) 818. It seems to be admitted by plaintiff in error that the above holdings are in harmony with the rule several times announced by this Court, and that, if the recital on depositor's pass book to the effect "All out of town items credited subject to final payment" did not make a special contract, taking the transaction out of the recognized rule, the judgment entered below was correct.

There can be no doubt, as we view it, that this Court has adopted the socalled "New York" rule as applied to ordinary banking transactions involving the collection of checks or drafts drawn on banks other than that of original deposit. Some of the leading authorities are cited in plaintiff in error's brief, and we shall not encumber ours by repetition, particularly in view of the fact that the opinions of the lower courts also cite them. Hence, we confine ourselves to a discussion of the contention now made by plaintiff in error that by reason of the above quoted recital on depositor's pass book a special contract was thereby made, which took this transaction out of the recognized rule.

Permit us to inquire what new contract was made by reason of this statement on the pass book? Did it impose a different liability from that which the law itself imposed as against the depositor? We say that the bank, by virtue of the endorsement of the check by the

depositor, obtained every right that it had, and even greater than was implied by the recital on the pass book. At most, this recital was but additional notice to the depositor as to his liability by reason of the deposit. The check in question was a negotiable instrument, and the payee, by reason of its endorsement, guaranteed ultimate payment to the lawful holder. This we understand to be the liability of an endorser, and the statement on the pass book neither gave the bank an additional right nor fixed, as against the depositor, added liability; and neither changed the relationship between the parties, which was, that by reason of the deposit without restriction, nothing being said thereon about it having been received for collection only, such relationship was simply that of debtor and creditor. If the check was ultimately paid, the bank owed to the depositor the amount of money represented therein. If the check was not ultimately paid, the depositor owed to the bank the amount of the credit previously given by virtue of the deposit, and the rule is, as we understand it, *that a bank is authorized at any time to charge against a depositor's account a past due indebtedness.* This, we think is a rule of law thoroughly established, and it is on that principal that the bank in the instant case could charge the depositor's account with the item. Noble vs. Doughten 83 Pac. 1048 and authorities cited. It was a past due indebtedness for which the depositor

was liable to the bank by virtue of the endorsement at the time the check was sold to the bank.

If we are correct, therefore, in our statement as to the relative rights and liabilities of depositors, then, how or in what way did the statement on the pass book in question make a special contract, and take this transaction out of the rule fixed in this Court as to the relationship of a depositor of an out of town item against the ultimate bank?

Carrying the inquiry a step further, suppose there had been no statement whatever on the back of the pass book, and the check had been endorsed and deposited as a cash item, as it was, would the law not make the depositor liable in the event of the failure of the bank to ultimately collect? There would seem to be but one answer to that question. The bank would have had the right in that circumstance to have charged the check back to the depositor, so that no different relationship existed, and no different liability was imposed by virtue of the statement on the pass book.

We may assume, therefore, that the question presented under the plaintiff in error's assignment should be treated as though there was a simple deposit without special contract changing the ordinary rule in such cases, and having done so the answer to the position assumed by plaintiff in error is found in Exchange National Bank vs. Third National Bank, 112 U. S., 276,

and Federal Reserve Bank vs. Malloy, 264 U. S., 160, and the general propositions of law which have been announced repeatedly by this and other courts to the effect that where a check is received in good faith as a deposit and the bank credits it as so much money, the title to the check is immediately transferred to the bank, which becomes liable to the depositor as for so much money deposited, are controling.

It is our view that the case at bar is ruled by Burton vs. United States, 196 U. S., 283. True enough, that was a criminal case, but it became necessary for the court to decide the question as to the ownership of a check given on a distant bank, and the rights of the bank of deposit. The checks in that case were drawn on a St. Louis Bank. They were endorsed and deposited in a Washington bank. We can do no better in this connection than quote from the opinion:

> "The defendant had an account with the bank, took each check when it arrived, went to the bank, indorsed the check which was payable to his order, and the bank took the check, placed the amount thereof to the credit of the defendant's account, and nothing further was said in regard to the matter. In other words, it was the ordinary case of the transfer or sale of the check by the defendant and the purchase of it by the bank, and upon its delivery to the bank, under the circumstances stated, the title to the check passed to the bank and it became the owner thereof. It was in no sense the agent of the defendant for the purpose of collecting the

amount of the check from the trust company upon which it was drawn. From the time of the delivery of the check by the defendant to the bank it became the owner of the check; it could have torn it up or thrown it in the fire or made any other use or disposition of it which it chose, and no right of defendant would have been infringed. The testimony of Mr. Brice, the cashier of the Riggs National Bank, as to the custom of the bank when a check was not paid, of charging it up against the depositor's account, did not in the least vary the legal effect of the transaction; it was simply a method pursued by the bank of exacting payment from the endorser of the check, and nothing more. There was nothing whatever in the evidence showing any agreement or understanding as to the effect of the transaction between the parties—the defendant and the bank—making it other than such as the law would imply from the facts already stated. The forwarding of the check "for collection", as stated by Mr. Brice, was not a collection for defendant by the bank as his agent. It was sent forward to be paid, and the Riggs Bank was its owner when sent."

It is to be noted that the court answered the several questions which we have propounded, particularly in the following:

> "The testimony of Mr. Brice, the cashier of the Riggs National Bank, as to the custom of the bank when a check was not paid of charging it up against the depositor's account, did not in the least vary the legal effect of the transaction; it was simply a method pursued by the bank of exacting payment from the endorser of the check, and nothing more."

Again we quote from the above case:

"There was no agreement or understanding of any kind other than such as the law makes from the transaction evidenced by the papers proved by uncontradicted evidence offered by the Government itself. In the absence of any special agreement that the effect of the transaction shall be otherwise (and none can be asserted here), there is no doubt that its legal effect is a change of ownership of the paper, and that the subsequent action of the bank in taking steps to obtain payment for itself of the paper which it had purchased can in no sense be said to be the action of an agent for its principal, but the act of an owner in regard to its own property. The learned judge in his charge to the jury did not, indeed, deny the general truth, of this proposition, but he left it to the jury to determine whether there was not an agreement or understanding made or arrived at by the parties at the time the checks were taken by the defendant to the bank, which altered the legal effect of the transaction actually proved. This, as we have said, there was not the slightest evidence of, and it was error to submit that question to the jury.

The general transactions between the bank and a customer in the way of deposits to a customer's credit and drawing against the account by the customer constitute the relation of creditor and debtor. As is said by Mr. Justice Davis, in delivering the opinion of the court in Bank of the Republic v. Millard, 10 Wall. 152, in speaking of this relationship, page 155:

'It is an important part of the business of banking to receive deposits, but when they are received, unless there are stipulations to the contrary, they belong to the bank, become part of its general funds, and can be loaned by it as

other moneys. The banker is accountable for the deposits which he receives as a debtor, and he agrees to discharge these debts by honoring the checks which the depositors shall from time to time draw on him. The contract between the parties is purely a legal one, and has nothing of the nature of a trust in it. This subject was fully discussed by Lords Cottenham, Brougham, Lyndhurst and Campbell in the House of Lords in the case of Foley v. Hill, 2 Clark & Finnelly, 28, and they all concurred in the opinion that the relation between a banker and a customer, who pays money to the bank, or to whose credit money is placed there, is the ordinary relation of debtor and creditor, and does not partake of a fiduciary character, and the great weight of American authorities is to the same effect.'

When a check is taken to a bank, and the bank receives it and places the amount to the credit of a customer, the relation of creditor and debtor between them subsists, and it is not that of principal and agent."

The same principle is announced in Bank of the Republic v. Millard, 10th Wall., 152, and to which we invite your attention.

There are many authorities from various state courts of last resort to the same effect, and we refer, as illustrative of the prevailing view, which is in accord with the above, to Aebi vs. Bank of Evansville, 124 Wis. 73, 102 N. W. R., 239, decided by the Supreme Court of Wisconsin, and Downey vs. National Exchange Bank, 52 Ind. App., 672, 96 N. E. R., 403, decided by the Appellate Court of Indiana, and in which the authorities are collated. The rule is there summarized as follows:

> "Where a bank credits a depositor with the amount of a check drawn upon it by another customer, and there is no want of good faith on the part of the depositor, the act of crediting is equivalent to a payment in money. * * * * * * When the check was returned to the Bank of Arlington and was by it turned over to appellant, and was by him accepted and charged to his account by the bank, this constituted a re-sale of the check to appellant,"

and such is the exact condition presented in this case. Here the check was endorsed and deposited in the First National Bank of Douglas. It was not ultimately collected by the Douglas bank, and was re-charged to the account of the City of Douglas in that bank, as per the letter of January 18, 1921, addressed to the City Treasurer (R. 53).

The Circuit Court of Appeals, in discussing the effect of the recital on the pass book in the case, said:

> "The language quoted unquestionably gives to the receiving bank the right to charge back against the account of the depositor checks for which credit is entered, if dishonored; but can this be construed as a limitation upon its liability for the faults of its agents so as to take the case out of the doctrine of the United States Courts? We think not. What the Bank of Douglas had in mind, and what the words in their ordinary usage mean, is that if the check is not finally paid by the drawee, it will be charged back. Nothing whatever is said about the faults of anyone or of exemption from liability therefor. * * * * * * * * So that the situation as we see it is unaffected by this language in the pass book. It did not extend or enlarge

> the initial bank's powers in the employment of its agents for collection so as to make them sub-agents of the City of Douglas." (R. 179-180.)

If the recital on the pass book did not change the rule, then the obligation of the First National Bank of Douglas was to collect the paper, and it became liable for the method and manner of doing this. This Court said, in Exchange National Bank vs. Third National Bank, 112 U. S., 276:

> "Whether a draft is payable in the place where the bank receiving it for collection is situated, or in another place, the holder is aware that the collection must be made by a competent agent. In either case there is an implied contract of the bank that the proper measures shall be used to collect the draft, and a right, on the part of its owner, to presume that proper agents will be employed, he having no knowledge of the agents. There is, therefore, no reason for liability or exemption from liability in the one case which does not apply to the other. And while the rule of law is thus general, the liability of the bank may be varied by consent, or the bank may refuse to undertake the collection. It may agree to receive the paper only for transmission to its correspondent and thus make it a different contract and become responsible only for good faith and due discretion in the choice of an agent. If this is not done or there is no implied understanding to that effect, the same responsibility is assumed in the undertaking to collect foreign paper and in that to collect paper payable at home. On any other rule, no principal contractor would be liable for the default of his own agent, where, from the nature of the business, it was evident he must employ subagents. The distinc-

> tion recurs, between the rule of merely personal representative agency and the responsibility imposed by the law of commercial contracts. This solves the difficulty and reconciles the apparent conflict of decision in many cases. The nature of the contract is the test. If the contract be only for the immediate services of the agent and for his faithful conduct as representing his principal, the responsibility ceases with the limits of the personal service undertaken. But where the contract looks mainly to the thing to be done and the undertaking is for the due use of all proper means to a performance, the responsibility extends to all necessary and proper means to accomplish the object, by whomsoever used."

The recital on the pass book cannot be tortured into an exemption from liability on the part of the receiving bank for the method and manner used to collect the check. It made no contract of agency, nor did it undertake to exempt itself from any liability ordinarily imposed upon a receiving bank. The plain and only effect to be given to the statement on the pass book was that, if it did not collect the check it would charge the amount back to the depositor, and that it already had that right cannot be questioned, so that the statement on the pass book really meant nothing. It changed no rule of law and gave no exemption to that bank as against the acts of any other bank in the chain to get the money. It did not pretend to exempt itself from any character of lia-

bility save and except as against the depositor in the event of non-payment.

We are thus faced with the original proposition, that there was no privity of contract between the depositor, City of Douglas, and the Federal Reserve Bank of Dallas.

Sumarizing, we have this to say: The check in question was endorsed without restriction, and deposited in the First National Bank of Douglas as a cash item. When so endorsed the depositor became liable to the bank as a matter of law for the amount thereof in the event of non-payment. There was no contract between the bank and the depositor that the bank was acting simply as agent and would not be responsible for any miscarriage of other agencies employed. In other words, there was no contract of exemption as against the faults of other banks in the handling of the item. The bank did use other agencies to effect collection; the check was not finally paid, and there was no privity between the original depositor and the Federal Reserve Bank, and hence no cause of action against that bank by the depositor. When the check was not paid, the First National Bank of Douglas had the right, as a matter of law, to charge the account of its depositor with the amount thereof, and in the present case the depositor voulntarily accepted the charge back.

We therefore respectfully insist that the judgments

entered in the lower courts were correct, and pray that the same be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 279.—October Term, 1925.

City of Douglas, Plaintiff in Error, vs. Federal Reserve Bank of Dallas. } Error to the United States Circuit Court of Appeals for the Fifth Circuit.

[June 1, 1926.]

Mr. Justice Stone delivered the opinion of the Court.

The County of Cochise, Arizona, on December 22, 1920, drew its check on the Central Bank of Willcox, Arizona, in favor of plaintiff in error, hereafter called plaintiff. Plaintiff delivered the check indorsed in blank to the First National Bank of Douglas, Arizona, and that bank credited plaintiff's account and passbook with the amount of the check. The passbook had printed upon its face, "All out of town items credited subject to final payment". The Douglas Bank indorsed the check, "Pay to the order of the El Paso Branch, Federal Reserve Bank of Dallas", which will be referred to as defendant, and forwarded it to that bank for collection.

Defendant forwarded the check, in due time, to the drawee bank at Willcox. The latter debited the drawer's account with the amount of the check, stamped it "paid", later returning it to the drawer, and transmitted to the defendant, in lieu of cash, its own check upon the Central Bank of Phoenix, in an amount covering this and other items. The last check was dishonored; both the Willcox Bank and the Central Bank of Phoenix having failed, the First National Bank of Douglas received no proceeds of the check and charged back the amount of it to the account of plaintiff.

Plaintiff brought suit in the District Court for western Texas to recover the amount of the check, on the ground that defendant was negligent in accepting the check of the Willcox Bank in payment instead of cash, especially because it was chargeable with notice that both the Willcox Bank and the Phoenix Bank were then

insolvent. The case was tried without a jury, and resulted in a judgment for defendant, 300 Fed. 573, which was affirmed by the Court of Appeals for the Fifth Circuit. 2 F. (2d) 818. The case comes here on writ of error. See Jud. Code, §§ 241, 128 and 24, First (a); *Sowell* v. *Federal Reserve Bank*, 268 U. S. 449. Plaintiff assigns as error the holding of the Circuit Court of Appeals that defendant was not in such a relationship with plaintiff as to permit plaintiff to recover for the defendant's negligence.

Both plaintiff and defendant concede that it is the rule of the federal courts that a bank which receives commercial paper for collection is not only bound to use due care itself, but is responsible to its customer for a failure to collect, resulting from the negligence or insolvency of any bank to which it transmits the check for collection. This is the so-called "New York rule", which in effect makes the first bank a guarantor of the solvency and diligence of the correspondents which it employs to effect the collection. *Exchange Nat. Bank* v. *Third Nat. Bank*, 112 U. S. 276. And see *Federal Reserve Bank* v. *Malloy*, 264 U. S. 160, 164, for a comparison of this rule of liability with the "Massachusetts rule" by which the initial bank is liable only for its failure to exercise due care in the selection of an agent to make the collection. Under the Massachusetts rule the agent selected becomes the agent of the owner of the paper, who may maintain an action directly against it for the negligent performance of its undertaking. See *Federal Reserve Bank* v. *Malloy*, *supra*, 164. Compare *Bank of Washington* v. *Triplett*, 1 Pet. 25, where the undertaking of the initial bank was to transmit paper for collection.

From this the defendant argues that under the rule applied in the federal courts, the First National Bank of Douglas became liable by its contract with plaintiff for the negligence of the defendant; hence that there was no privity of contract between plaintiff and defendant, and no basis for a recovery even though defendant was negligent in accepting an exchange check from the Willcox Bank. See *Federal Reserve Bank* v. *Malloy*, *supra*, 164. This was the view taken by the Circuit Court of Appeals, but the plaintiff objects that it is not a necessary corollary of the New York rule applied in *Exchange National Bank* v. *Third Nat. Bank*, *supra*, that one who deposits paper for collection may not proceed against a correspondent selected by the initial bank for that purpose, for negligent failure to make the collection, and that neither

Exchange Nat. Bank v. *Third Nat. Bank* nor *Federal Reserve Bank* v. *Malloy* so held. It objects also that in any event the rule is not applicable here because of the stipulation appearing on the face of the passbook "All out of town items credited subject to final payment."

It is said that the effect of this language was to relieve the initial bank, the First National Bank of Douglas, from the liability which would otherwise have resulted under the New York rule, and to make it a mere agent to transmit the paper to defendant for collection, and thus to make applicable the Massachusetts rule. See *Federal Reserve Bank* v. *Malloy, supra.* In that case, a local statute relieved the bank receiving paper for collection, from any liability except that of due care in selecting a sub-agent for collection and in transmitting the paper to it; and it was held that the owner of the paper might proceed against the sub-agent for negligent failure to collect the paper.

It is not necessary to decide any of these questions here. For when paper is indorsed without restriction by a depositor, and is at once passed to his credit by the bank to which he delivers it, he becomes the creditor of the bank; the bank becomes owner of the paper, and in making the collection is not the agent for the depositor. *Burton* v. *United States*, 196 U. S. 283; *Union Electric Steel Co.* v. *Imperial Bank*, 286 Fed. 857; *General Amer. Tank Car Co p.* v. *Goree*, 296 Fed. 32, 36; *In re Ruskay*, 5 F. (2d) 143; Scott, *Cases on Trusts*, p. 64, note, par. 8, pp. 66-67.

Such was the relation here between the plaintiff and the Douglas Bank unless it was altered by the words printed on the passbook to the effect that out of town items were credited "subject to final payment." The meaning of this language, as the cashier of the Douglas Bank testified, and as the court below held, was that if the check was not paid on presentation, it was to be charged back to plaintiff's account. The check was paid and the drawer and indorsers discharged. *Malloy* v. *Federal Reserve Bank*, 281 Fed. 997; *Federal Reserve Bank* v. *Malloy*, 264 U. S. 160, 166; *Nineteenth Ward Bank* v. *Weymouth Bank*, 184 Mass. 49; *Winchester Milling Co.* v. *Bank of Winchester*, 120 Tenn. 225. Without these words the relationship between the plaintiff and the bank was that of indorser and indorsee; and their use here did not vary the legal rights and liabilities incident to that relationship, unless

it dispensed with notice of dishonor to the depositor. As was said by the court in *Burton* v. *United States, supra,* 297:

"The testimony . . . as to the custom of the bank when a check was not paid, of charging it up against the depositor's account, did not in the least vary the legal effect of the transaction; it was simply a method pursued by the bank of exacting payment from the indorser of the check, and nothing more. There was nothing whatever in the evidence showing any agreement or understanding as to the effect of the transaction between the parties—the defendant and the bank—making it other than such as the law would imply from the facts already stated."

While there is not entire uniformity of opinion, the weight of authority supports the view that upon the deposit of paper unrestrictedly indorsed, and credit of the amount to the depositor's account, the bank becomes the owner of the paper, notwithstanding a custom or agreement to charge the paper back to the depositor in the event of dishonor. *Burton* v. *United States, supra; Brusegaard* v. *Ueland,* 72 Minn. 283; *Nat. Bank of Commerce* v. *Bossemeyer,* 101 Neb. 96, 102; *Walker & Brock* v. *Ranlett Co.,* 89 Vt. 71; *Aebi* v. *Bank of Evansville,* 124 Wis. 73. See *Scott* v. *McIntyre Co.,* 92 Kans. 503; *Vickers* v. *Machinery Warehouse & Sales Co.,* 111 Wash. 576. But see *Implement Co.* v. *Bank,* 128 Tenn. 320; *Packing Co.* v. *Davis,* 118 N. C. 548.

Plaintiff having thus surrendered its rights in the paper, only rights arising out of its contract with the initial bank remained. If those rights were affected by the act or omission of defendant, they were affected only because that contract so stipulated. Defendant's duties arose out of its contract with the initial bank, or out of its relation to that bank as owner of the paper. Hence there was no relationship between plaintiff and defendant which could be made the basis of recovery for defendant's want of diligence.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.